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IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT.

No. 24443. OCTOBER TERM 1956.

(N. L. R. B. Case No. 2-CC-333.)

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

and

CROWLEY'S MILK COMPANY, INC.

(N. L. R. B. Case No. 2-CC-355.)

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

and

CROWLEY'S MILK COMPANY, INC.

ON PETITION TO REVIEW DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD.

APPENDIX TO BRIEF FOR PETITIONER LOCAL NO. 680.

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Case No. 24443.

(N. L. R. B. Case No. 2-CC-333.)

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO.

and

CROWLEY'S MILK COMPANY, INC.

(N. L. R. B. Case No. 2-CC-355.)

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO.

and

CROWLEY'S MILK COMPANY, INC.

ON PETITION TO REVIEW DECISION AND ORDER OF N. L. R. B.

Statement Under Rule 15(b).

This proceeding was commenced by an unfair labor practice charge filed by Crowley's Milk Co., Inc. (hereinafter referred to as Crowley's) against the petitioner (hereinafter referred to as Local 680) on April 6, 1955.

A first amended charge was filed on April 8, 1955, and a second amended charge was filed on May 31, 1955.

Statement Under Rule 15(b).

The General Counsel of the respondent, by the Acting Regional Director for the Second Region (New York, New York, and vicinity, including northern New Jersey) issued a complaint against the petitioner on June 17, 1955.

The petitioner interposed its answer on or about June 29, 1955.

On October 12, 1955, the two cases, 2-CC-333 and 2-CC-355 were consolidated by order of the Regional Director.

On October 14, 1955, the General Counsel filed an amended complaint against both Local 680 and Local 338.

On October 31, November 1, 2, 9 and 10, 1955, hearings were held before Sidney L. Feiler, Trial Examiner.

On February 21, 1956, the Trial Examiner issued his Intermediate Report.

On February 21, 1956, the proceeding was transferred to and continued before the respondent Board.

On or about March 21, 1956, Local 680 filed its exceptions to the Intermediate Report of the Trial Examiner.

On October 25, 1956, the respondent Board issued its Decision and Order affirming and adopting the findings, conclusions and recommendations of the Trial Examiner, by reason of which it found petitioner, Local 680, guilty of certain unfair labor practices and directed it to take certain remedial action.

The petitioner appeared below by Thomas L. Parsonnet, Esq., of Newark, N. J. The General Counsel of the respondent Board appeared by Samuel M. Kaynard, Esq. Petitioner appears here by Samnel J. Cohen, Esq., of New York, New York, Thomas L. Parsonnet, Esq. of counsel.

Charge Against Labor Organization or its Agents.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Case No. 2-CC-333
Date Filed 4-6-55

1. Labor organization or its agents against which charge is brought

Name Milk Drivers and Dairy Employees Local Union No. 680 of New Jersey International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. L.

Address 535 High Street, Newark (2) New Jersey

The above-named organization(s) or its agents has (have) engaged in and is (are) engaged in unfair labor practices within the meaning of section (8b) subsection(s) (1);(2)(4)(A);(4)(B);(4)(C); and (4)(D) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the charge (See attached rider)

(Rider to 2-CC-333) Charge—4-6-55

On or about and between April 1, 1955 and April 4, 1955, both dates inclusive, and continuing since April 4, 1955, by its officers, agents, and representatives, inducing and encouraging and forcing the employees of Sunrise Dairies, Hillside, New Jersey, an employer of labor, in the course of their employment by Sunrise Dairies, to engage in a concerted refusal to use, process, or otherwise work on or in any way handle cheese, half and half, or any products of Crowley's Milk Company, Inc., Binghamton, New York, with a plant at Paterson, New Jersey and Newburgh, New York, with the object of: (1) forcing, and did force, their said employer Sunrise Dairies to cease doing business with, and to cease buying products from said Crowley's Milk Company, Inc.; (2) forcing or requiring employees of

Charge Against Labor Organization or its Agents.

Crowley's Milk Company, Inc. to join said Union; (3) restraining or coercing employees of Crowley's Milk Company, Inc. in the exercise of the rights guaranteed to them in Sec. 7 of the National Labor Relations Act, as amended; (4) causing or attempting to cause Crowley's Milk Company, Inc. to discriminate against its employees; and (5) forcing or requiring Crowley's Milk Company, Inc. to assign its work to employees of the said Union; and did institute and now maintains in force a secondary boycott against Crowley's Milk Company, Inc.'s products.

On or about April 4, 1955 and continuing since April 4, 1955, by its officers, agents and representatives, inducing, encouraging and forcing the employees of International Milk Company, 445 Hillside Avenue, Hillside, New Jersey, an employer of labor, in the course of their employment by International Milk Company to engage in a concerted refusal to use, process or otherwise work on or in any way handle cream and plain skim condensed milk, or any products of Crowley's Milk Company, Inc., Binghamton, New York with a plant at Paterson, New Jersey and Newburgh, New York, with the object of: (1) forcing, and did force, their said employer, International Milk Company to cease doing business with, and to cease buying products from said Crowley's Milk Company, Inc.; (2) forcing or requiring employees of Crowley's Milk Company, Inc. to join said Union; (3) restraining or coercing employees of Crowley's Milk Company, Inc. in the exercise of the rights guaranteed to them in Sec. 7 of the National Labor Relations Act, as amended; (4) causing or attempting to cause Crowley's Milk Company, Inc. to discriminate against its employees; and (5) forcing or requiring Crowley's Milk Company, Inc. to assign its work to employees of the said Union; and did in-

stitute and now maintains in force a secondary boycott against Crowley's Milk Company, Inc.'s products.

By the acts set forth above, and by other acts and conduct, it, by its officers, agents and representatives, has and is now interfering with, restraining and coercing employees of Crowley's Milk Company, Inc. and innocent neutrals, and did institute and now maintains in force a secondary boycott against said Crowley's Milk Company, Inc.; in violation of Sec. 8(b)(1)(2),(4)(A), (4)(B), (4)(C) and (4)(D) of said Act, as amended.

Demand is made that an application be made for an injunction to enjoin said lawless acts and activities, as provided for in said Act, as amended.

3. Name of Employer Crowley's Milk Company, Inc.
4. Location of plant involved,102 Thomas Street, Paterson, N. J.; 145 Conklin Ave., Binghamton, N. Y.; Newburgh, N. Y.
5. Type of establishment Wholesale and retail sales, processing and mfg. of milk.
6. Identify principal product or service Milk and Milk Products.
7. No. of workers employed 20 Paterson; 300 Binghamton; 80 Newburgh.
8. Full name of party filing charge Crowley's Milk Company, Inc.
9. Address of party filing charge c/o Lloyd C. Anderson, 193 Water St., P. O. Box 590, Binghamton, New York.
10. Tel. No. 2-5337.
11. Declaration.

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ FRANCIS E. CROWLEY
Francis E. Crowley
President

April 5, 1955.

First Amended Charge Against Labor Organization or its Agents.

Case No. 2-CC-333
Date Filed 4-8-55

1. Labor organization or its agents against which charge is brought.

Name Milk Drivers and Dairy Employees Local Union No. 680 of New Jersey, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. L.

Address 535 High Street, Newark (2) New Jersey.

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section (8b) subsection(s) (4)(A);(B); and (C) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the charge (See statement attached)
(Rider to Case No. 2-CC-333) First Amended Charge 4-8-55

On or about and between April 1, 1955 and April 4, 1955, both dates inclusive, and continuing daily since April 4, 1955, by its officers, agents and representatives, inducing, encouraging and forcing the employees of Sunrise Dairies, Hillside, N. J., an employer of labor, and International Milk Company, 445 Hillside Avenue, Hillside, N. J., an employer of labor, and each of said employers, to engage in a concerted refusal in the course of their employment, respectively, to use, manufacture, process, or otherwise handle or work on any goods, purchased from or supplied by Crowley's Milk Company, Inc., Binghamton, N. Y., with plants at said

First Amended Charge Against Labor Organization or its Agents.

City and at Newburgh, N. Y., and Paterson, N. J., with the object of:

(A) forcing or requiring their respective employees, viz, Sunrise Dairies and International Milk Company, abovementioned, and each of said employers, and did force and require said employers, and each of them, to cease using, selling, handling, or otherwise dealing in the products of Crowley's Milk Company, Inc., aforesaid; and to cease doing business with Crowley's Milk Company, Inc.;

(B) forcing Crowley's Milk Company, Inc., an employer of labor, to recognize or bargain with said union, or one or more Locals of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. L., by what ever proper name it may be known, as the representative(s) of its employees; when at said time and times said union and no Local of said Teamsters Union, above named, was (were) not certified as the representative of the employees of Crowley's Milk Company, Inc.;

(C) forcing or requiring said Crowley's Milk Company, Inc., to recognize or bargain with said union as the representative of employees of said Crowley's Milk Company, Inc., while, and notwithstanding that, United Dairy Workers Association is the certified, (by the National Labor Relations Board), representative of such employees under the provisions of section 9 of said Act, as amended.

All in violation of Section 8(b)(4)(A),(B) and (C) of said Act, as amended.

Demand is made that an application be made for an injunction enjoining said lawless acts and activities, as provided for in said Act, as amended.

First Amended Charge Against Labor Organization or its Agents.

3. Name of employer Crowley's Milk Company, Inc.
4. Location of plant involved 102 Thomas Street, Paterson, N. J.; 145 Conklin Ave., Binghamton, N. Y.; Newburgh, N. Y.
5. Type of establishment Wholesale and retail sales, processing and mfg. of milk.
6. Identify principal product or service Milk and milk products.
7. No. of workers employed 20 Paterson; 300 Binghamton; 80 Newburgh.
8. Full name of party filing charge Crowley's Milk Company, Inc.
9. Address of party filing charge c/o Lloyd C. Anderson, 193 Water St., P. O. Box 590, Binghamton, New York.
10. Tel. No. 2-5337.
11. Declaration.

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ FRANCIS E. CROWLEY
President

April 7, 1955.

Second Amended Charge Against Labor Organization or its Agents.

Case No. 2-CC-333
Date Filed 5-31-55

1. Labor organization or its agent against which charge is brought.

Name Milk Drivers and Dairy Employees Local Union No. 680 of New Jersey, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. L.

Address 535 High Street, Newark (2) New Jersey.

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section (8b) subsection(s) (4)(A); and (B) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the charge (See statement attached)

Crowley's Milk Co., 2-CC-333 Second Amended Charge

On or about and between April 1, 1955 and April 4, 1955, and since said dates, and continuing therefrom daily, by its officers, agents and representatives, inducing, encouraging and forcing the employees of Sunrise Dairies, Hillside, N. J., an employer of labor, and International Milk Co., 445 Hillside Avenue, Hillside, N. J., an employer of labor, North Jersey Dairyland, 487 Chancellor Ave., Irvington, N. J., an employer of labor, Thompson's Dairy, 293 E. Mt. Pleasant Ave., Livingston, N. J., an employer of labor, Ideal Dairy Farms, 2331 Morris Ave., Union, N. J., an employer of labor, and other employers, and each of said employers, to engage in a concerted refusal in the

course of their employment, respectively, to use, manufacture, process, or otherwise handle or work on any goods, purchased from or supplied by Crowley's Milk Company, Inc., Binghamton, N. Y., with plants at said City and at Newburgh, N. Y., and Paterson, N. J. with the object of:

(A) forcing or requiring their respective employees of each of the above-mentioned employers and other employers, and did force and require said employers, and each of them, to cease using, selling, handling, or otherwise dealing in the products of Crowley's Milk Company, Inc., aforesaid and to cease doing business with Crowley's Milk Company, Inc.;

(B) forcing Crowley's Milk Company, Inc., an employer of labor, to recognize or bargain with said union, or one or more Locals of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. L., by whatever proper name it may be known, as the representative(s) of its employees, when at said time and times said union and no local of said Teamster's Union, abovenamed, was (were) not certified as the representative of the employees of Crowley's Milk Company, Inc.

All in violation of Section 8(b)(4)(A) and (B) of said Act, as amended.

Demand is made that an application be made for an injunction enjoining said lawless acts and activities, as provided for in said Act, as amended.

3. Name of employer Crowley's Milk Company, Inc.

4. Location of plant involved 102 Thomas Street, Paterson, N. J.; 145 Conklin Ave., Binghamton, N. Y.; Newburgh, N. Y.

Second Amended Charge Against Labor Organization or its Agents.

5. Type of establishment Wholesale and retail sales, processing and mfg. of milk.

6. Identify principal product or service Milk and milk products.

7. No. of workers employed 20 Paterson; 300 Binghamton; 80 Newburgh.

8. Full name of party filing charge Crowley's Milk Company, Inc.

9. Address of party filing charge c/o Lloyd C. Anderson, 193 Water St., P. O. Box 590, Binghamton, N. Y.

10. Tel. No. 2-5337.

11. Declaration.

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ FRANCIS E. CROWLEY
President

May 26, 1955.

Complaint.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECOND REGION

Case No. 2-CC-333.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL

and

CROWLEY'S MILK COMPANY, INC.

It having been charged by Crowley's Milk Company, Inc., c/o Lloyd C. Anderson, 193 Water Street, P. O. Box 590, Binghamton, New York, herein called Crowley, that Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, 535 High Street, Newark, New Jersey, herein called Local 680, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter referred to as the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, designated by the Board's Rules and Regulations Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

1. (a) A copy of the Charge in this proceeding was served by registered mail upon Local 680 on April 6, 1955.

(b) A copy of the First Amended Charge was served by registered mail upon Local 680 on April 8, 1955.

(c) A copy of the Second Amended Charge was served by registered mail upon Local 680 on May 31, 1955.

2. Crowley is, and has been at all times herein mentioned, a corporation duly organized under and existing by virtue of the laws of the State of New York.

3. At all times herein mentioned, Crowley has maintained its principal office and place of business at 145 Conklin Avenue, in the City of Binghamton, State of New York, herein called the Binghamton plant, various other plants, places of business, warehouses and other facilities at Paterson, New Jersey, Newburgh, New York, Middletown, New York, and Allentown, Pennsylvania (herein called Paterson, Newburgh, Middletown and Allentown plants, respectively), milk depots and receiving stations in the aforementioned states of the United States, and is now and has been continuously engaged at said plants and places of business, warehouse and other facilities in the purchase, processing, manufacture, sale and distribution and delivery of milk, cream, cheese, ice cream mix and other milk products.

4. During the past year Crowley, in the course and conduct of its business operations, caused to be purchased, transferred and delivered to its abovementioned plants and places of business located in the State of New York and New Jersey and the Commonwealth of Pennsylvania, milk and other goods and materials valued at in excess of $1,000,000, of which goods and materials valued at in excess of $500,000 were transported to said plants and places of business in interstate commerce directly from states of the United States other than the States of New York and New Jersey and the Commonwealth of Pennsylvania wherein said plants and places of business are located.

5. During the past year Crowley, in the course and conduct of its business operations, caused to be processed, manufactured, sold and distributed at said plants and

places of business products valued at in excess of $1,000,000, of which products valued in excess of $500,000 were shipped from said plants and places of business in interstate commerce directly to states of the United States other than the States of New York and New Jersey and the Commonwealth of Pennsylvania wherein said plants and places of business at which said products were manufactured are located.

6. (a) North Jersey Dairyland, Inc., Sunrise Dairies, International Milk Company, Town Talk Ice Cream Company, Thompson Dairy, Hohneker Dairy, Ideal Dairy Company, Port Murray Milk Co., Frick Bros., Tuscany Dairy Company, Alderney Milk Company, Ideal Farms, Terwilliger & Wakefield, Inc., Sisco Dairy Co. and Lotz Bros. Dairy (herein called North Jersey, Sunrise, Ideal, International, Town Talk, Thompson, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Tuscany, Alderney, Terwilliger, Sisco and Lotz, respectively) each are and have been at all times material herein engaged in the purchase, processing, sale and distribution of milk, ice cream and milk and ice cream products, and each are and have been at all times material herein customers of Crowley and purchasers of Crowley products.

(b) Mutual Milk Bottle Exchange, Inc. (herein called Mutual) is and has been at all times material herein a company engaged in the collection sorting and redistribution of milk bottles, boxes, cans, etcetera, belonging to various companies engaged in the processing and distribution of milk and milk products.

7. Crowley is and has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

8. Local 680 is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

9. (a) Since about 1942, Local 680 and various other local unions affiliated with Local 680's parent organization, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, have been engaged in a campaign to organize the employees of Crowley and have sought to secure recognition from Crowley and/or force or require Crowley to recognize or bargain with it, as the collective bargaining representative of Crowley's employees.

(b) In furtherance of the aforesaid activities and objectives, Local 680 has, since on or about April 1, 1955, picketed the Paterson plant of Crowley.

10. At no time material herein has Local 680 or any other local union affiliated with Local 680's parent organization been certified under the provisions of Section 9 of the Act as the collective bargaining representative of any of Crowley's employees at its Paterson plant, or at any other plant or place of business of Crowley.

11. Since on or about March 9, 1955, Local 680, by its officers, agents and representatives, has engaged in, and, by requests, appeals, orders, directions, instructions and other means, has induced or encouraged the employees of North Jersey, Sunrise, International, Town Talk, Thompson, Ideal, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Tuscany, Alderney, Terwilliger, Sisco, Lotz and Mutual, the employees of companies with whom Local 680 has collective bargaining agreements, and the employees of other employers, to engage in strikes or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services for their employers, where an object or objects thereof was as follows:

(a) to force or require North Jersey, Sunrise, International, Town Talk, Thompson, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Ideal, Tuscany, Alderney, Terwilliger, Sisco, Lotz and Mutual and the other aforementioned employers or persons to cease using, selling, handling, transporting or otherwise dealing in the products of Crowley; and/or

(b) to force or require North Jersey, Sunrise, International, Town Talk, Thompson, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Ideal, Tuscany, Alderney, Terwilliger, Sisco, Lotz and Mutual and the other aforementioned employers or persons to cease doing business with Crowley; and/or

(c) to force or require Crowley to recognize or bargain with Local 680 as the exclusive collective bargaining representative of its employees, although Local 680 has not been certified as the representative of such employees in accordance with the provisions of Section 9 of the Act.

12. By the acts described above in paragraph 11, and by each of said acts, Local 680 did engage in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(A) and (B) of the Act.

13. The activities of Local 680, described above in paragraph 11, occurring in connection with the operations of Crowley, described above in paragraphs 2, 3, 4, 5, 6 and 7, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(A) and (B) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting

Regional Director for the Second Region, on this 17th day of June, 1955, hereby issues this Complaint against Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousmen & Helpers of America, AFL, Respondent herein.

JAMES A. JAFFEE,
Acting Regional Director,
National Labor Relations Board,
2 Park Avenue,
New York 16, New York.

Answer to Complaint.

Respondent, Milk Drivers and Dairy Employees Local Union No. 680, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, answering the complaint filed herein says that:

1. It admits the allegations of paragraph 1 of the complaint.

2. It has no knowledge of the allegations of paragraph 2 of the complaint.

3. It has no knowledge of the allegations contained in paragraph 3 of the complaint other than that the said Crowley's maintains plants at Binghamton, New York, Paterson, New Jersey, Newburgh, New York, Middletown, New York and Allentown, Pennsylvania.

4. It has no knowledge of the allegations contained in paragraph 4 of the complaint.

5. It has no knowledge of the allegations contained in paragraph 5 of the complaint.

6. (a) It has no knowledge of the allegations contained in paragraph 6(a) of the complaint.

6. (b) It admits the allegations of paragraph 6(b) of the complaint.

7. It has no knowledge of the allegations contained in paragraph 7 of the complaint and leaves the complainant to the proof thereof.

8. It admits the allegations contained in paragraph 8 of the complaint.

9. (a) It denies the allegations contained in paragraph 9(a) of the complaint.

9. (b) It admits that since on or about April 1, 1955 Local 680 has picketed the Paterson plant of Crowley's, but denies the remaining allegations contained in paragraph 9(b).

10. It admits the allegations contained in paragraph 10 of the complaint.

11. It denies each and all of the allegations contained in paragraph 11 of the complaint.

12. It denies the allegations contained in paragraph 12 of the complaint.

13. It denies the allegations contained in paragraph 13 of the complaint.

14. Respondent, Local 680, and its officers, agents and representatives, have in all matters related to the complaint conducted themselves without violating any of the provisions of section 8(b) of the Act.

PARSONNET, WEITZMAN & ORANSKY,
Attorneys for the Respondent,

By THOMAS L. PARSONNET.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } ss.:

RICHARD KEBER of full age being duly sworn according to law upon his oath deposes and says:

1. I am the Secretary-Treasurer of the Respondent, Local 680.

2. I have read the attached Answer to the Complaint herein filed and do say that the same is true to the best of my knowledge, information and belief.

RICHARD KEBER.

Sworn and subscribed to before me this 28th day of June, 1955.

GEORGE DUGGAN,
An Attorney at Law of N. J.

Order Consolidating Cases and Rescheduling Hearing.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. 2-CC-333.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

CROWLEY'S MILK COMPANY, INC.

Case No. 2-CC-355.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL No. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

CROWLEY'S MILK COMPANY, INC.

Charges and Amended Charges, pursuant to Section 10(b) of the National Labor Relations Act, as amended, 61 Stat. 136, having been filed by Crowley's Milk Company, Inc. in Case No. 2-CC-333, and the undersigned having issued a Notice of Hearing and Complaint thereon on June 17, 1955, and the hearing pursuant to notice being now scheduled for October 17, 1955; and

Charges having been filed by said charging party in Case No. 2-CC-355, and the undersigned having issued a Notice of Hearing and Complaint thereon on September 20, 1955, and the hearing pursuant to notice being now scheduled for October 17, 1955; and

Order Consolidating Cases and Rescheduling Hearing.

The undersigned having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the National Labor Relations Board Rules and Regulations—Series 6, as amended, that Cases Nos. 2-CC-333 and 2-CC-355 be, and they hereby are, consolidated.

IT IS FURTHER ORDERED that the hearing in said consolidated cases be, and the same hereby is, rescheduled from October 17, 1955, to October 31, 1955, at 1:00 p. m., in the Hearing Room, on the 24th floor, 2 Park Avenue, New York, New York.

Dated at New York, New York, October 12, 1955.

CHARLES T. DOUDS,
Regional Director National Labor
Relations Board,
2 Park Avenue,
New York 16, New York.

Amended Complaint.

[Same Title.]

It having been charged by Crowley's Milk Company, Inc., c/o Lloyd C. Anderson, 193 Water Street, P. O. Box 590, Binghamton, New York, herein called Crowley, that Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, 535 High Street, Newark, New Jersey, herein called Local 680, and that Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousement & Helpers of America, AFL, 2 Crary Avenue, Mt. Vernon, New York, herein called Local 338, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein after referred to as the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, designated by the Board's Rules and Regulations, Series 6 —as amended, Section 102.15, hereby issues this Amended Consolidated Complaint and alleges as follows:

1. (a). A copy of the Charge in Case No. 2-CC-333 was served by registered mail upon Local 680 on April 6, 1955.

(b). A copy of the First Amended Charge in Case No. 2-CC-333 was served by registered mail upon Local 680 on April 8, 1955.

(c). A copy of the Second Amended Charge in Case No. 2-CC-333 was served by registered mail upon Local 680 on May 31, 1955.

(d). A copy of the Charge in Case No. 2-CC-355 was served by registered mail upon Local 338 on August 18, 1955.

2. Crowley is, and has been at all times herein mentioned, a corporation duly organized under and existing by virtue of the laws of the State of New York.

3. At all times herein mentioned, Crowley has maintained its principal office and place of business at 145 Conklin Avenue, in the City of Binghamton, State of New York, herein called the Binghamton plant, various other plants, places of business, warehouses and other facilities at Paterson, New Jersey, Newburgh, New York, Middletown, New York and Allentown, Pennsylvania (herein called Paterson, Newburgh, Middletown and Allentown plants, respectively), milk depots and receiving stations in the aforementioned states of the United States, and is now and has been continuously engaged at said plants and places of business, warehouse and other facilities in the purchase, processing, manufacture, sale and distribution and delivery of milk, cream, cheese, ice cream mix and other milk products.

4. During the past year Crowley, in the course and conducts of its business operations, caused to be purchased, transferred and delivered to its abovementioned plants and places of business located in the States of New York and New Jersey and the Commonwealth of Pennsylvania, milk and other goods and materials valued at in excess of $1,000,000 of which goods and materials valued at in excess of $500,000 were transported to said plants and places of business in interstate commerce directly from states of the United States other than the States of New York and New Jersey and the Commonwealth of Pennsylvania wherein said plants and places of business are located.

5. During the past year Crowley, in the course and conduct of its business operations, caused to be processed, manufactured, sold and distributed at said plants and places of business products valued at in excess of $1,000,000,

of which products valued in excess of $500,000 were shipped from said plants and places of business in interstate commerce directly to states of the United States other than the States of New York and New Jersey and the Commonwealth of Pennsylvania wherein said plants and places of business at which said products were manufactured are locate.

6. (a) North Jersey Dairyland, Inc., Sunrise Dairies, International Milk Company, Town Talk Ice Cream Company, Thompson Dairy, Hohneker Dairy, Ideal Dairy Company, Port Murray Milk Co., Frick Bros., Tuscany Dairy Company, Alderney Milk Company, Ideal Farms, Terwilliger & Wakefield, Inc., Sisco Dairy Co. and Lotz Bros. Dairy (herein called North Jersey, Sunrise, Ideal, International, Town Talk, Thompson, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Tuscany, Alderney, Terwilliger, Sisco and Lotz, respectively) each are and have been at all times material herein engaged in the purchase, processing, sale and distribution of milk, ice cream and milk and ice cream products, and each are and have been at all times material herein customers of Crowley and purchasers of Crowley products.

(b) Mutual Milk Bottle Exchange, Inc. (herein called Mutual) is and has been at all times material herein a company engaged in the collection, sorting and redistribution of milk bottles, boxes, cans, etcetera, belonging to various companies engaged in the processing and distribution of milk and milk products.

(c) Maple Grove Dairy, herein called Maple Grove, is, and has been at all times material herein, engaged in the purchase, sale and distribution of milk and dairy products, and is, and has been at all times material herein, a customer of Crowley and purchaser and distributor of Crowley products.

7. Crowley is and has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

8. Local 680 and Local 338 each are and have been at all times material herein labor organizations within the meaning of Section 2(5) of the Act.

9. (a) Since about 1942, Local 680 and Local 338 jointly and severally have been engaged in a campaign to organize the employees of Crowley and have sought to secure recognition from Crowley and/or force or require Crowley to recognize or bargain with it, as the collective bargaining representative of Crowley's employees.

(b) In furtherance of the aforesaid activities and objectives, Local 680 has, since on or about April 1, 1955, picketed the Paterson plant of Crowley.

(c) In furtherance of the aforesaid activities and objectives, Local 338 has, since on or about April 1, 1955, picketed the Binghamton, Allentown and Newburgh plants of Crowley.

10. At no time material herein has Local 680 or Local 338 been certified under the provisions of Section 9 of the Act as the collective bargaining representative of any of Crowley's employees.

11. Since on or about March 9, 1955, Local 680 and Local 338, jointly and severally, by their officers, agents and representatives, have engaged in, and by requests, appeals, orders, directions, instructions and other means, have induced or encouraged the employees of North Jersey, Sunrise, International, Town Talk, Thompson, Ideal, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Tuscany, Alderney, Terwilliger, Sisco, Lotz, Mutual, Maple Grove, the employees of companies with whom Local 680 and Local 338 have collective bargaining agreements, and the employees of

other employers, to engage in strikes, or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services for their employers where an object or objects thereof was as follows:

(a) to force or require North Jersey, Sunrise, International, Town Talk, Thompson, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Ideal, Tuscany, Alderney, Terwilliger, Sisco, Lotz, Mutual, Maple Grove and the other aforementioned employers or persons to cease using, selling, handling, transporting or otherwise dealing in the products of Crowley; and/or

(b) to force or require North Jersey, Sunrise, International, Town Talk, Thompson, Hohneker, Ideal Dairy, Port Murray, Frick Bros., Ideal, Tuscany, Alderney, Terwilliger, Sisco, Lotz, Mutual, Maple Grove, and the other aforementioned employers or persons to cease doing business with Crowley; and/or

(c) to force or require Crowley to recognize or bargain with Local 680 and/or Local 338 as the exclusive collective bargaining representative of its employees, although Local 680 and/or Local 338 have not been certified as the representative of such employees in accordance with the provisions of Section 9 of the Act.

12. By the acts described above in paragraph 11, and by each of said acts, Local 680 and Local 338, jointly and severally, have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(4)(A) and (B) of the Act.

13. The activities of Local 680 and Local 338 described above in paragraph 11, occurring in connection with the operations of Crowley, described above in paragraphs 2, 3, 4, 5, 6 and 7, have a close, intimate and substantial rela-

tion to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(A) and (B) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, on this 14th day of October, 1955, hereby issues this Amended Consolidated Complaint against Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Respondents herein.

CHARLES T. DOUDS,
Regional Director,
National Labor Relations Board,
2 Park Avenue,
New York 16, New York.

Intermediate Report and Recommended Order.

The appendix submitted by petitioner, Local 338, in Case No. 2-CC-355, being heard simultaneously herewith, contains a full and complete copy of the Intermediate Report and Recommended Order, except for a few paragraphs, deletions of which is shown by asterisks. Rather than clutter the record by inclusions of the entire Report, we shall simply, in this appendix, supply copies of the paragraphs which do not appear in the appendix of Local 338, all of which contain references in the Report and Recommended Order applicable to Local 680, and not to Local 338.

On p. 11a of Local 338's appendix, in place of the asterisks, the following paragraphs should appear:

> With respect to unfair labor practices the complaint alleges in substance that from on or about March 9, 1955, Local 680, by its officers, agents and representatives, has engaged in, and, by requests, appeals, orders, directions, instructions and other means, has induced or encouraged the employees of certain named employer customers of Crowley's with whom Local 680 has collective bargaining agreements, and the employees of other employers, to engage in strikes or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services for their employers, where an object or objects thereof was to force the secondary employers to cease dealing in the products of Crowley's and or forcing the secondary employers to cease doing business with Crowley's and or forcing Crowley's to recognize or bargain with Local 680 as the exclusive collective bargaining representative of its employees, although Local 680 has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

Local 680, in its answer to this complaint, dated June 28, 1955, admits certain jurisdictional allegations, but denies the commission of any unfair labor practices.

On p. 15a of Local 338's appendix, in place of the asterisks the following paragraph should appear:

Prior to the issuance of the complaint against Local 680, the Regional Director commenced proceedings for an injunction in the United States District Court for the District of New Jersey. A hearing was held on June 9, 10, and 14, 1955, before the Hon. Richard Hartshorne, D. J., at which oral testimony and exhibits were presented. The parties to the present proceeding stipulated that certain witnesses in the New Jersey proceeding, if called upon to testify in the present proceeding, would testify as indicated in portions of the New Jersey transcript which were received in evidence as an exhibit.

On p. 16a, in place of the first set of asterisks, the following paragraph should appear:

With respect to the testimony in the New Jersey proceeding, the undersigned cautioned counsel that not having seen the witnesses he was in no position to resolve any conflicts in testimony. The General Counsel and counsel for Local 680 took the position that while there were some conflicts in testimony, these would not affect the issues to be resolved herein. They did not feel it necessary to introduce further testimony. The undersigned has used the New Jersey testimony to the extent that matters referred to were not in dispute.

On p. 16a, in place of the second set of asterisks, the following paragraphs should appear:

As to Local 680, a decision involving it and Crowley's is reported in 88 NLRB 1049 (March 13, 1950).

The following background material is set forth in that case: A labor organization, United Dairy Workers Association, was certified by the Board, in 1942, as exclusive bargaining agent for Crowley's production and maintenance employees at its Binghamton plant. In September 1945, a contract was made with the Newburgh, New York, local of the Association. In October 1945, the Association organized the Paterson, New Jersey, plant and contracts were thereafter effected with Crowley's. The three locals joined in negotiations with Crowley's, but separate contracts were executed with each local.

In January 1948, the Paterson local of the Association sent a letter to Crowley's expressing its readiness to enter into negotiations for a 1948 contract. In February, Local 680 notified Crowley's that it claimed to represent employees at the Paterson plant. It also filed with the Board a petition for an election and certification of representatives.

On July 1, 1948, Local 680 filed a charge against Crowley's alleging that it had engaged in unfair labor practices including an allegation that Crowley's, in violation of the Act, had failed to bargain collectively with it as the duly designated representative of employees in an appropriate unit at the Paterson plant.

Crowley's filed a charge against Local 680 alleging a violation of the boycott provisions of the Act. The Regional Director refused to issue a complaint on this charge and his ruling was upheld by the General Counsel on August 14, 1948.

The Board in September 1948 directed an election on the representation petition filed by Local 680 (79 NLRB 602). This election was not held because the request for an election was withdrawn.

The status of Local 680 as bargaining representative was considered in hearings on the unfair labor practice charge it had filed against Crowley's. On March 13, 1950, the Board issued its Decision and Order (88 NLRB 1049), in which it found that Crowley's had violated the Act by recognizing and entering into a contract with the Association while a question concerning representation of the Paterson employees was pending before the Board, and that a strike of employees which was economic in its inception was converted into an unfair labor practice strike by Association recognition and the granting of a wage increase and a new contract. However, the Board dismissed the allegations of an unlawful refusal to bargain. It held that it had not been established that Crowley's failure to recognize the Union on its demand was in bad faith. It ordered the reinstatement of the strikers upon their application, the withdrawal of recognition of the Paterson local of the Association, and the posting of a notice.

On August 8, 1951, the Board remanded the case to permit the parties to adduce relevant testimony concerning the strikers' rights to reinstatement (95 NLRB 1023). Counsel for Local 680 first attempted to find the former strikers but, on December 14, 1951, wrote the Regional Director, in part, as follows:

> . . . It appears now that the lengthy delay in processing the case before the Board has resulted in the employees involved who were refused reinstatement, securing employment elsewhere, and they have all lost interest in further proceedings in this case. They have informed the union that they do not desire to cooperate or to testify or to have anything further to do with the proceedings.

In these circumstances, the union concludes that no useful purpose will be served in further hearing. Thereafter, Local 680 took no further part in the proceedings.

In its supplemental Decision and Order (102 NLRB 996) the Board found that only one of the strikers evinced any interest in reinstatement with back pay. The orders of the Board were enforced (208 F. 2d 444 C. A. 3)).

On p. 17a of Local 338's appendix, the asterisks at the bottom of the page should be replaced by the following:

C. Activities at premises of secondary employers

1. By Local 680

Local 680 and 58 employers in the business of milk handling and distributing are parties to a standard contract entitled, "Metropolitan Area Agreement of the Milk Drivers and Dairy Employees Local 680." The contract is here referred to as the Standard Milk Contract.

Local 680 and 19 employers engaged in the manufacture of ice cream are parties to a standard contract entitled, "Agreement, New York City, Northern New Jersey and Southern New York State Area-Wide Union Agreement in the Ice Cream Industry of the Ice Cream Drivers and Employees Union Local 680." The contract is referred to as the Standard Ice Cream Contract.

On March 9, 1955, Local 680 sent the following letter to all employers who were parties to the Standard Milk Contract:

This Local Union, Local 680, and also our sister Local, 338, are and have been for some years, directly engaged in a labor dispute with Crowley's

Milk Co. In fact, on a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Co. was found by the Board and the Courts to have engaged in an unfair labor practice.

May we remind you of section 18 (d) of our contract, which reads as follows:

> "It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this agreement for the members of the union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the union has given written notice to the Employer of the existence of such labor dispute."

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Co. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Co. and will discontinue making deliveries or pickups to or from this company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested, in order that we may avoid taking steps to enforce our contract.

An identical letter was sent to all employers who were parties to the Standard Ice Cream Contract except that it quoted Section 5 (d) of the Ice Cream Contract. This section refers to Locals 757, 338, and 680, but otherwise is identical in language with Section 18 (d) of the Milk Contract.

On the same day letters were dispatched to the employers, Local 680 sent copies of the letters to its approximately 100 stewards at the respective companies with a letter reading:

> Dear Sir and Brother:
>
> Enclosed find copy of letter that was sent to your employer. Please see to it that all members under your jurisdiction will abide by the enclosed letter.

This letter was the only general instruction given to all the stewards. It was stipulated that some of the shop stewards posted copies of the letters they received on the bulletin boards at their plants.

Keber testified that Local 680 has a president, Lawrence McGinley, a secretary-treasurer, Keber, two business agents, Albert Cooke and Anthony Iorio, and shop stewards. Keber testified that Local 680 contracts require that all stewards and other members obey orders. If they believe a contract is being violated, they can report the alleged infringement to the union office. They cannot, according to Keber, take independent action and have been so instructed.

As to the sentence in the letter sent the stewards: "Please see to it that all members under your jurisdiction will abide by the enclosed letter," Keber declared he meant that if the employer refused to cooperate, the stewards should communicate with Local 680 for further instructions. His testimony on this point in the New Jersey proceeding is as follows:

The Witness: We meant that the shop steward who is the representative of our local union locally in each branch in all disputes and controversies that arise in that particular branch or plant, they must first be discussed of course with the shop steward—we took it upon ourselves to feel that the employers would contact the shop stewards regarding our letter to them referring to the Crowley products. Our shop steward because of our meetings and instructions to them know that when a letter like this is sent out that they are to do whatever they can to have an employer cooperate with the letter and if the employer refuses they then must of course call the union office for further instructions and in this particular case we have only had as far as I know four calls from the fifty some-odd companies where the employers did not exactly refuse to cooperate with the letter but called up and said that they had a certain problem because of the letter that we sent.

* * * * * *

The Witness: It meant our shop stewards were to inform the rest of the employees and show them a copy of the letter that we sent to the employer requesting the employer to cooperate, to discontinue handling the product and if an employee was instructed directly, directly instructed by the employer to handle it, that they must handle it and immediately contact the Union office.

He also testified that after April 1 he expected all his members not to handle Crowley's products in the absence of a direct order from their employer. If an order were given, it was expected that the men would handle the shipment, but notify Local 680.

In a discussion between the Court and counsel in the New Jersey hearing, counsel for Local 680 stated that it was his position that the letter from Local 680 to its stewards "was a statement to the employees that absent an instruction from an employer, they were not to handle the product."

Keber testified that only four employers voiced any objection to the March 9 letter, International, Sunrise, Thompson, and North Jersey.

International Milk Company.

International Milk Company and its subsidiary, Town Talk Ice Cream Company, were customers of Crowley's. International and Town Talk are under contractual obligation to Local 680. Charles Shuta is the shop steward of the Union for both concerns. After International and Town Talk received letters from the Local 680 asking for a cessation of business relations they found themselves in a dilemma in view of contractual obligations they also had with Crowley's. The concerns did not observe the April 1 deadline and received a shipment from Crowley's on April 4.

Albert Blum, president of both companies, when he went to the plant premises on April 4, found a Crowley's truck on plant premises parked and not being unloaded. He was told that Charles Shuta, the Local 680 shop steward had told platform men not to unload the truck.[3] After Blum checked personally with Shuta and was informed by the latter that he had issued or-

[3] Shuta, according to William P. Coyle, a salesman for Crowley's, stopped a Crowley's truck at the International platform and told Coyle, who spoke with him, that on orders of Local 680 he would not allow Crowley's merchandise to be accepted and that if a delivery were made, there would be a boycott. Coyle reported this to Blum. The driver of the truck, Frank Berardi, testified Shuta prevented his making a delivery and told him there was a notice posted on the bulletin board stating the men were not to handle Crowley's products.

ders not to unload the truck on instructions from Local 680, he telephoned Keber and was told by Keber, according to Blum, that the instructions had come from the office of the Union.[4] Blum replied that the Crowley's goods would have to go back in view of those instructions. The shipment was returned and no further orders were placed with Crowley's. Blum's decision not to continue with Crowley's was as a result of the contract with Local 680 and his understanding of the instructions issued by it.

About a week prior to the April 4 incident Blum had had a conversation with Shuta in which he told Shuta that in view of contractual obligations he would let a shipment come to the plant after April 1 and see what happened. Shuta replied the shipment would not be unloaded. Blum acquiesced in the action of Local 680 and its members and at no time did he issue affirmative instructions to employees of International or Town Talk to handle Crowley's deliveries. Employees were expected to unload and handle all products as they arrived.

Keber maintained that Blum did not tell him the men were refusing to obey instructions.

Shuta testified that he posted the March 9 letter on the bulletin board of his company. He further testified that he understood the letter to mean, "That we had a contract with the Company and that all members should abide with the orders." However, he also stated that there were outstanding union instructions that all members should obey orders from their employers whether they considered them right or wrong.

[4] Keber testified he told Blum that Local 680 had a dispute with Crowley's, that the letter of March 9 was official, and that the Union would insist on its contract rights. He denied that Blum told him that the men were refusing to obey instructions or that he said the men were instructed not to handle Crowley's goods.

His version of his conversation with Blum 10 or 15 days after the receipt of the letter is that Blum told him he was under contract to Crowley's but he, Shuta, pointed out that Blum also was under obligation to Local 680, in accordance with the posted letter. Blum said he did not want any trouble with the Union and would get in touch with it.

As to the April 4 attempt to make a delivery by a Crowley's driver, Shuta's version of the incident is as follows:

> Q. Now what happened on April 4th?
>
> A. On April 4th, between the hours of 8:30 and 9 o'clock in the morning Crowley's milk truck came in with a load of cream and milk. I happened to be there and the fellow pulled in. I told the driver to hold the truck up, pull it up to the front of the garage so he wouldn't hold up the drivers on the platform. He said, "What was the matter?" I said, "You know we have a labor dispute," I says, "your company had an order issued to them by mail." He said—well, he referred me to Mr. Coyle, the salesman who was following the truck into the plant, and Mr. Coyle asked me what was the matter, and I said, "You know what is the matter," I said, "the deadline was April 1st." I says, "We refuse to handle your merchandise." So he wanted to know where the superintendent was and I referred him to the warehouse which is a half a block away from the plant. So he talked to the superintendent of the warehouse and it seems as though he wanted the superintendent to unload the truck. The superintendent and Mr. Coyle came in with me into the plant and they were talking. So the superintendent says to me, "What do you want me to do, unload the truck?" I said that was "up to you, Mr. Middleton, you can do what you like."

Q. Then what happened?

A. They went in the office, Mr. Coyle and Mr. Middleton and the superintendent and the president, Mr. Blum. They were in the office talking. What went on there I do not know. I wasn't there present.

Q. You were in for a short time, were you not?

A. After they had their discussion.

Q. Then what happened?

A. He asked me——

Q. Who asked you?

A. Mr. Blum asked me in the office, he says, "Is there anything that we can do?" I said, I wouldn't know. The only thing is you have a contract here, and I said, "You have a letter to this effect and that is all I am going by." He said we have a contract. I said I am sorry and I walked out of the office.

No affirmative orders were issued to employees to handle that delivery. Shuta testified he would not unload the truck because of the contents of the letter from Local 680.

Sunrise Dairies

Sunrise Dairies is a party to the Standard Milk Agreement. It has done business with Crowley's for over 20 years. The steward on the job is Belfort Del Vecchio. The company received the March 9 letter, but, according to Bo Adlerbert, its president, the letter was disregarded. On Friday, April 1, Crowley's attempted to make a delivery at Sunrise. An employee, Roberts, refused to accept delivery, maintaining he had been instructed by the union steward not to handle Crowley's goods. Adlerbert had the Crowley's driver put the delivery, some tins of cottage cheese, on a con-

veyor and Adlerbert took them off the conveyor at the other end and stored them.

Joseph Grenci is plant manager of the company. On Saturday, April 2, Adlerbert instructed Grenci to package the cheese delivered by Crowley's the preceding day. Grenci testified he instructed an employee, Quinn, to package the cheese. Quinn refused to do so claiming he would have to receive further instructions from the shop steward first. Grenci spoke with Del Vecchio, told him that future shipments from Crowley's were being stopped, but there was a problem with the cheese on hand. Del Vecchio replied that in view of the cooperation of the company the cheese could be packaged. This was done.

On April 4, after another employee's refusal to handle Crowley's goods, Adlerbert telephoned Keber and asked him whether men at the plant had been instructed not to handle Crowley's products. Keber replied, according to Adlerbert, "Yes, they are not supposed to touch the products of Crowley Milk Company." Adlerbert said that he wanted to continue doing business with Crowley's, but Keber refused to revoke the instructions to the men and Adlerbert stopped doing business with Crowley's because the men would not handle Crowley's products. No affirmative instructions were issued to the employees to handle those products.

Keber testified he told Adlerbert that Local 680 had a labor dispute with Crowley's and expected his company to live up to its contract with the Union and not handle Crowley's products. He denied that the question of purported instructions by him to employees not to handle Crowley's products was discussed, that the shop steward or his instructions was discussed, or that he was told the men were refusing to obey orders. He

maintained that he would consider it a violation of contract by Sunrise for it to continue normal business relations with Crowley's.

Del Vecchio did not post the March 9 letter, but told two employees who worked in the cooler about it. He told them he had received a letter from the Union that there was a labor dispute with Crowley's and "we were advised not to accept any of their products until further notice." Del Vecchio also told them, according to his testimony they were not to refuse any direct orders. On April 2 Del Vecchio was told by Grenci, the plant manager, that a Crowley's shipment had not been accepted by him the previous day, but that Adlerbert had signed for the shipment of cheese. Grenci stated that he had asked employee Quinn to package the cheese, but the latter had not carried out the assignment. Del Vecchio promised to speak to Quinn immediately. On the way he met an office employee, Harvey, who told him, "I am sorry the way it turned out but there will be no future deliveries from Crowley's." Del Vecchio did testify that he told both Grenci and Harvey that since the company was cooperating with the Union he would tell Quinn to pack the cheese and did so. He denied telling Quinn about the letter or telling him not to pack Crowley's products.

North Jersey Dairyland, Inc.

North Jersey Dairyland, Inc., was a customer of Crowley's up to April 1, 1955. It also is a party to the Standard Milk Agreement. Frank Elias is the shop steward. On the morning of April 1, Rudolph Lang, president of the company, was told by Elias, according to the former, he was going to tell an ice cream maker at the plant not to handle Crowley's ice cream mix, pursuant to instructions he had received from the

Union. When Lang was informed that the ice cream maker, George Machuella, was refusing to use the Crowley's mix, he issued instructions to send Machuella home because there was no other work for him. Elias went to Lang and told him that if Lang sent Machuella home, he, Elias, would have to take Machuella to union headquarters, according to instructions from the Union. Lang could not spare Elias and also run the risk of paying him for time away from the job. He obtained some other mix, kept the men working. He discontinued purchasing from Crowley's because of the refusal of his employees to handle Crowley's products after April 2, when there was a delivery received from Crowley's.

Lang, on April 7, 1955, wrote a letter to Local 680 in which he stated, in substance, that he was not certain whether the Union's position was correct and suggested that it be agreed that his company continue to use Crowley's products until the matter could be arbitrated. Local 680 made no reply to this letter, but Keber prior to the letter being sent had had a conversation with the attorney for the company in which he maintained that Local 680 was acting in accordance with its contractual rights and referred the attorney, Elmer Goodwin, to counsel for the Union.[5] Lang did not give any orders to his employees after the April 1 incident directing them to handle Crowley's products.

Local 680 stipulated that its shop steward, Elias, told employees on April 1 not to handle Crowley's products. It maintained these instructions were revoked the next day on instructions from the Union.

Keber testified that he learned that Elias had given direct orders not to handle Crowley's products and

[5] Goodwin also testified that Keber told him that the men could not handle Crowley's products.

Iorio, a union business representative, was sent to North Jersey to straighten matters out.

Elias testified that when he saw a delivery of ice cream mix being made from a Crowley's truck on April 1 he told an ice cream maker, George Machuella not to handle Crowley's products. Later, Elias told an employee a Local 680 member of the situation. The next day, Tony Iorio, a union business agent, told him he had violated union laws under which members were supposed to obey orders and told him to tell Machuella he could handle Crowley's products. This was done, according to Elias.

Elias remembered speaking to Lang and Mc Cormack, an employee of the company, on April 1. He could not recall what he told Lang. He remembered telling McCormack that Machuella should not handle the Crowley's mix. He further testified that he could not remember telling Lang he would have to take Machuella to the union hall if the latter were sent home.

Joseph Thompson & Sons

Frank G. Thompson, a partner in the dairy processing firm of Joseph Thompson & Sons, testified that he returned from a vacation on March 30, 1955, and then first saw Local 680's letter of March 9. On March 31 he wrote the Union that he had been advised by Crowley's that there was no labor dispute pending between it and the Teamster locals named in the union contract and that Thompson's attorney was doubtful of the validity of the contract clause and the cooperation requested by Local 680. He requested that the matter be submitted to arbitration and that the letter of March 9 be withdrawn pending the decision of the arbitrator. On the day the letter to Local 680 was sent or the next day, Thompson continued, Isaac Fevang, the union

steward on the job, spoke with him and told him that he was advised "down below" that the Company would have to discontinue handling Crowley's products; otherwise he would have to advise the men not to handle them. Thompson replied that he was satisfied with Crowley's products, but would make other arrangements after the next delivery from Crowley's. This was done. No specific orders to handle Crowley's products were given to employees after Thompson talked with Fevang.

Local 680 on April 1, 1955, replied to Thompson's letter. It expressed willingness to arbitrate, but refused the request to postpone the application of the hot goods provision of its Contract (Sec. 18 D). The letter, signed by Keber, but dictated by counsel, concluded: "You are at liberty to request arbitration, and if you do, we shall engage in arbitration proceedings with you. Meanwhile, however, our members will not handle Crowley's Milk or milk products."

Fevang testified that stewards were instructed by the Union to obey orders, but to report to the Union any infractions of the labor contract. He received a copy of the March 9 letter. He understood the letter to mean that the union members should not handle Crowley's products in the absence of a direct order from the employer. However, he did not call the letter to the attention of the union members at Thompson. After Thompson returned from his vacation, Fevang spoke with him on April 1 or 2 and asked him not to handle Crowley's products. He denied giving Thompson any ultimatum or stating the men would not handle Crowley's products. He had no instructions or communications from the Union on this matter other than the March 9 letter. He denied that a final Crowley's shipment was handled on April 4 or 5 only after specific

assurance was obtained from Thompson that no more orders would be placed with Crowley's. He did admit that Thompson told him it would be the last shipment.

* * * * * *

On September 26, 1955, Local 680 sent a letter to all employers with whom it had contracts telling them that despite information to the contrary its dispute with Crowley's still continued. It asked continued cooperation and compliance with the contract by not handling Crowley's products.

On p. 28a of Local 338's appendix, the asterisks should be replaced by the following:

Local 680 contends that since, in the *McAllister* case there was a majority holding of a violation of section 8(b)(4)(A) only to the extent that limitations outlined in the chairman's opinion were met, the case stands for the proposition that there is a violation only when employees on inducement or direction of their union refuse a direct and affirmative order from their employer to handle goods of a primary employer. Local 680 contends that it attempted to follow and obey this decision. It points out that its letter to Local 680 stewards was the only information sent them about the Crowley's dispute; that stewards and members generally had been told to obey instructions from their employers even if they believed that a violation of the contract with the Union had occurred, and that no affirmative instructions of the type used in the *McAllister* case had been given by any employer to any union member who was not handling Crowley's products. It also contends that in one instance where a steward ordered members not to handle Crowley's products. Local 680 disavowed his action the next day.

On p. 33a, the asterisks should be replaced by the following:

Local 680 asserts that its only communication to its stewards was its letter of March 9 enclosing a copy of the letter it sent to the employers with whom it had standard contracts and requesting the stewards to "see to it that all members under your jurisdiction will abide by the enclosed letter." It contends that this letter was not an inducement or encouragement of employees to engage in a strike or refusal to handle Crowley's products and that employees were under contractual obligation and oral instruction from union officials to obey orders of their employers, even though they considered them in violation of the standard contract. Significantly the letter to the employers quoted provisions of the contract giving employees a right to refuse to handle hot cargo. It did not point to the clause in the contract requiring employers not to aid other companies "in any fight that may be waged against the Union" (Sec. 18 (b) of the standard milk contract). It may be arguable whether employees were expected to obey affirmative orders from their employers in view of their contractual protection, but it is apparent that in the first instance they were expected to and did stop handling Crowley's products on April 1, 1955, the date set in the letter for breaking business relations with Crowley's.

Keber, Local 680 secretary-treasurer, testified that he expected all members not to handle Crowley's products in the absence of a direct order from their employer. Shuta, Local 680 steward at International Milk Company, testified that he posted the letter on the company bulletin board and would not unload Crowley's trucks because of the contents of the letter. His description of his refusal to unload a Crowley's truck

on April 4, 1955, illustrates quite clearly his understanding of what Local 680 expected him to do.

At Sunrise Dairies the Local 680 steward, Del Vecchio, did not post the March 9 letter, but he did tell two employees of it and that they were advised not to accept any of Crowley's products. A Crowley's shipment was not handled by the employees on April 1.

North Jersey Dairyland was the only concern whose steward was reprimanded by Local 680 for telling employees not to handle Crowley's products. However, the record indicates that Local 680 officials were concerned that the instructions of the steward, Elias, might be construed by the employees as a direction to disobey affirmative instructions. There was no effort by Local 680 to instruct employees they could handle Crowley's products even in the absence of an affirmative order.

Isaac Fevang, Local 680 steward at Joseph Thompson & Sons testified he understood the March 9 letter to mean that union members should not handle Crowley's products. He did not tell the other union members of the letter, but he did ask his employer not to handle Crowley's products.

Under the standard set forth in the *Sand Door* case, *supra*, "regardless of the existence of a 'hot cargo' clause, any direct appeal to employees by a union to engage in a strike is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present."

The undersigned concludes that the letter of March 9, 1955, sent by Local 680 to the stewards of Crowley's customers, International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, together with oral transmission of the contents of the letter by the stewards and their

orders to employees, as set forth in this section, constituted inducement or encouragement of employees to engage in a concerted refusal to handle Crowley's goods within the meaning of the Act and as applied in the *Sand Door* case, *supra*. An object of this activity was to force a cessation of business between the secondary employers and Crowley's an object proscribed by the Act.[9]

Local 680 contends that where a steward did not tell his fellow employees of the March 9 letter there was no "concerted refusal" within the meaning of Section 8 (b) (4) (A). Such a contention has been rejected by the Board.[10]

On p. 42a of Local 338's appendix, before "Appendix B" of the Intermediate Report, should be inserted "Appendix A", which reads as follows:

APPENDIX A.

NOTICE

To All Members of Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO

Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order

[9] It is not necessary to decide whether the sending of the March 9 letter to stewards of companies other than those shown on the record to be employees of the companies handling Crowley's products was violative of the Act since such a finding would merely be cumulative and would not affect the relief to be directed.

In making the above findings, the undersigned has not relied on any of the testimony in the New Jersey proceeding which was contraverted. He has relied principally on the documentary evidence and the testimony of the stewards themselves.

[10] *Local 11, United Brotherhood of Carpenters and Joiners, etc. (General Millwork Corporation)*, 113 NLRB No. 124, n. 6.

to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT induce or encourage employees of INTERNATIONAL MILK COMPANY, SUNRISE DAIRIES, NORTH JERSEY DAIRYLAND, INC., and JOSEPH THOMPSON & SONS, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 680 as the representative of certain of its employees, unless and until Local 680 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO
(Labor Organization)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Statement of Exceptions on Behalf of Respondent Local 680.

Respondent, Milk Drivers and Dairy Employees Local Union 680, hereafter referred to as Local 680, hereby excepts to the report and recommendations of the Trial Examiner, in the following particulars:

1. To the denial of the Trial Examiner of the motion to sever this cause, 2-CC-333 from case No. 2-CC-355, and to his denial of the motion to overrule the order of consolidation improperly entered in this cause, upon the following grounds:

(a) The order of consolidation was entered without notice to respondent or hearing of argument, and was therefore entered in denial to respondent of due process of law.

(b) The order of consolidation was not proper order as provided by the Board's rules, and did not in fact constitute a consolidation, since it "consolidated" only the proceedings, and did not order a consolidation of the charge, as required by the Rules (102.33).

(c) The sole ground urged by the counsel for the General Counsel as justification for the consideration was the allegation in the amended complaint of "joint and several" action by the two respondents. At the end of the hearing, the motion to sever was renewed by the respondent. Thereafter, the trial examiner found that the evidence did not support the allegation of joint action, thereby disposing of the sole ground offered by counsel for the General Counsel as justification for the consolidation. Nevertheless, the Trial Examiners failed and refused to grant the motion for severance. Respondent Local 680 contends that such failure and refusal was clearly erroneous.

2. To the denial by the Trial Examiner of this Respondent's motion to dismiss the complaint, at the opening of the hearing, and again at the close thereof, or the ground that the amended complaint was not based upon a charge

filed with the Board which charged Respondent with the offenses alleged by the amended complaint.

3. To the finding of fact by the Trial Examiner that the letter from Keber to the Respondent's Shop Stewards dated March 9, 1955 (Exh. G. C. 3-B) "was the only general instruction given to all the stewards"; this finding is in opposition to uncontradicted testimony to the contrary.

4. To the inference of facts drawn by the Trial Examiner, on page 9 of his report, lines 6-7, that International, Sunrise, Thompson, and North Jersey, "voiced objection to the March 9 letter", when in fact the evidence is to the contrary.

5. To the finding of fact that Albert Blum was "told that Charles Shuta, the Local 680 shop steward had told platform men not to unload the truck". There was no evidence of this, except hearsay testimony which was excluded by the Court and there was evidence to the contrary.

6. To the finding of fact that Shuta testified that "he would not unload the truck because of the contents of the letter from Local 680". The clear weight of the testimony is to the contrary.

7. To the finding of fact, that Quinn "refused" "to package the cheese".

8. To the finding, concerning North Jersey Dairyland, Inc., which infers that Elias "could not remember" what he had said to Lang or McCormick; the inference of the Trial Examiner is that Elias simply did not recall what happened, whereas it is clear from the record that Elias denied saying certain things, by stating that he "could not remember" saying them.

9. To the Trial Examiner's entire factual report concerning North Jersey Dairyland, as being thoroughly distorted and unsupported by the evidence.

Statement of Exceptions on Behalf of Respondent Local 680.

10. To the false impression given by the Trial Examiner, concerning Joseph Thompson & Sons, that specific instructions were given by this company to its employees that the latter must handle Crowley's product.

11. To the Trial Examiner's emphasis upon the statement in the Union's letter of April 1, 1955, to Thompson, that "Meanwhile, however, our members will not handle Crowley's Milk or milk products", without reference at all to the Union's counsel's testimony that this language was directed to the company, but not communicated to its employees, in the light of the decision of the Second Circuit Court of Appeals in the *Conway's* case.

12. To the Trial Examiner's reliance upon the opinion of the district court in the New Jersey proceeding in this case (133 F. Sup. 336) while thoroughly ignoring the decision of the district court in the New York proceeding, which diametrically disagreed therewith.

13. To the Trial Examiner's conclusion (on p. 20, ll. 49-52) that the conduct of respondent was aimed at employers other than Crowley's and was in violation of the statute.

14. To the conclusion that, despite a hot cargo clause and a clause in a collective bargaining contract that the secondary employer will not handle the primary employer's products, a "failure" to handle hot cargo, even in the absence of orders to do so, constitutes a "refusal".

15. To the finding of the Trial Examiner, (p. 21, ll. 55-56) that the employee "is already obligated to do what he has failed to perform", despite his employer's previous agreement that he is not obligated to perform the act in question.

16. To each and every finding of law and fact contained in *Item 2* of the Trial Examiner's report, on p. 22, l. 1 to

p. 23, l. 25, on the ground that this portion of the report is completely false and contrary to fact and to the record. It is a fact, despite this portion of the report, that in no instance other than that of North Jersey Dairyland, were any employees induced to refuse to obey orders, and, in the case of North Jersey Dairyland, this act was an unauthorized act of the Shop Steward, for which he was "bawled out" and given "the devil" by the Union's business agent.

As evidence of the Trial Examiner's distortions of the facts, we take specific exception to:

(a) his finding, p. 22, ll. 24-29, that Shuta refused to unload a truck. The fact, as shown by the record, is that it never was his duty to unload any truck, that he did not refuse *at any time,* in fact, that *he was a route salesman,* not an inside worker, or a loader or unloader.

(b) his inference, p. 22, ll. 31-34, that two Sunrise employees refused to handle products of Crowley's because of instructions of the steward, Del Vecchio. The record is completely barren of any such evidence, and does contain evidence to the contrary.

(c) his inference, p. 22, ll. 35-36, that there were stewards other than that of North Jersey Dairyland, who told employees not to handle Crowley's products. This is false, as established by the record.

(d) his finding, contrary to the direct evidence that Fevang understood the March 9 letter to mean that Union members should not handle Crowley's products.

(e) his inference, p. 22, ll. 49-52, that the Union appealed directly to employees to "engage in a strike".

(f) his conclusion, p. 22, l. 54-p. 23, l. 3, that Local 680 induced or encouraged employees to engage in a concerted refusal to handle Crowley's goods.

17. To the finding of the Trial Examiner that the activities of Local 680 were committed with an object of forcing or requiring Crowley's to recognize or bargain with it

as a representative of Crowley's employees. This finding was based upon no evidence whatever.

18. To the second conclusion of law reached by the Trial Examiner, on p. 26, ll. 10-22.

19. To the fourth conclusion of law reached by the Trial Examiner.

20. To the first and third recommendation of the Trial Examiner, on the ground that the same, with relation to Local 680, have no support in fact or in law.

21. To the failure of the Trial Examiner to rule favorably or at all upon any of the motions made by this respondent, including:

(1) The motion to sever the two cases herein under consideration.

(2) The motion to dismiss the complaint as not being supported by the charges.

(3) The motion to dismiss the complaint with respect to the following alleged secondary employers: Hohneker, Ideal Dairy, Port Murray, Frick Brothers, Tuscan, Alderney, Terwilliger, Sisco, Lotz, Mutual, and Maple Grove. (See transcript, vol. 5, pp. 311-314.)

22. To the recommendation of the Trial Examiner that the respondent Local 680 be directed to cease and desist from the activity complained of, on the ground that such a cease and desist order would constitute an impairment of respondent Local 680's contractual rights in derogation of its constitutional privileges and immunities under the Fifth and Fourteenth Amendment to the Constitution of the United States, and on the further ground that such an order would deprive respondent of its right of free speech as guaranteed by the First Amendment to the Constitution of the United States.

PARSONNET, WEITZMAN & ORANSKY,
Attorneys for Respondent, Local 680,
By THOMAS L. PARSONNET.

Decision and Order.

On February 21, 1956, Trial Examiner Sidney L. Feiler issued his Intermediate Report in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner with the following modifications.

1. Respondent contend that the Regional Director improperly consolidated the cases herein. Consolidation is a matter for administrative discretion and is provided for in the Board's Rules and Regulations.[1] In the instant cases Respondents were alleged to have sought by unlawful conduct to secure recognition from the same employer and to cause other employers to cease doing business with that employer, the charging party in both cases. Furthermore, witnesses, such as Anderson, general counsel for the charging party, and Keber, secretary-treasurer of Local 680, testified concerning events relating to both cases. Nor have Respondents demonstrated that they have in any way been hindered in the presentation of their defenses or otherwise prejudiced by the consolidation. Accordingly, we reject

[1] Section 102.33, Rules and Regulations of the National Labor Relations Board, Series 6, as amended.

Respondents' contention that the instant cases were improperly consolidated.[2]

2. For the reasons indicated in the Intermediate Report, we agree with the Trial Examiner that it has not been established that either Respondent participated in, or was otherwise responsible for, the conduct of the other found herein to constitute violations of Section 8 (b) (4) (A) and (B) of the Act. Accordingly, we shall dismiss the allegation contained in the amended complaint that in so violating the Act the Respondents acted jointly. We therefore find it unnecessary to determine whether, as Respondents contend, the allegation of joint responsibility contained in the amended complaint was insufficiently supported by the charges filed in these cases.

3. The General Counsel contends that the remedial orders recommended by the Trial Examiner should be broadened to prohibit each Respondent from attempting, through unlawful secondary pressures, to force Crowley's Milk Company, Inc., to recognize not only that Respondent but the other Respondent and any other labor organization. Activity having such an objective may, we believe, be reasonably anticipated on the part of Respondents in view of the evidence showing that in reviewing their campaigns against Crowley's, Respondents were acting pursuant to a decision reached at a meeting of the Eastern Conference of Teamsters. That meeting was held for the purpose of discussing the Crowley case and was attended by representatives of the International Union and local unions handling dairy products throughout the Eastern Seaboard. For this reason we shall amend the orders recommended by the Trial Examiner in accordance with the General Counsel's request.

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[2] Cf. *Roadway Express, Inc.*, 108 NLRB 874, fn. 1; *N. L. R. B. v. United Mine Workers of America, District 31, et al.*, 198 F. 2d 389 (C. A. 4) 1952.

Order.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its officers, representatives, agents, assigns and successors, shall cease and desist from inducing and encouraging employees of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 680, Local 338 or any other labor organization, as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

2. The Respondent Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its officers, representatives, agents, assigns and successors, shall cease and desist from engaging in and/or inducing and encouraging employees of Edward Greco, d/b/a Maple Grove Dairy, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a)

to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 338, Local 680 or any other labor organization, as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. The Respondents shall take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at their respective business offices copies of the attached notices; Appendix A in the case of Local 680 and Appendix B in the case of Local 338.[3] Copies of said notices, to be furnished by the Regional Director for the Second Region, after being duly signed by official representatives of the Respondents, shall be posted by them immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

Local 680 shall also sign copies of Appendix A and return them to the Regional Director for posting at the premises of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons. Local 338 shall also sign a copy of Appendix B for posting at the premises of Edward Greco, d/b/a Maple Grove Dairy.

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[3] In the event that this order is enforced by a decree of a United States Court of Appeals, these notices shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondents acted jointly in violating Sections 8 (b) (4) (A) and (B) of the Act.

Dated, Washington, D. C. Oct. 25, 1956.

Boyd Leedom, Chairman
Stephen S. Bean, Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

PHILIP RAY RODGERS, MEMBER, concurring:

I concur in the result reached herein by Chairman Leedom and Member Bean for the reasons set forth in my concurring opinions in *Local 1796, et al., (Sand Door & Ply Wood Co.)*, 113 NLRB 1210, and in *Local No. 886, et al., (American Iron Machine Works)*, 115 NLRB No. 121.

Dated, Washington, D. C. Oct. 25, 1956.

Philip Ray Rodgers, Member
NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE

To all Members of Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT induce or encourage employees of INTERNATIONAL MILK COMPANY, SUNRISE DAIRIES, NORTH JERSEY DAIRYLAND, INC., and JOSEPH THOMPSON & SONS, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 680, Local 338, or any other labor organization, as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE

To all Members of Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT engage in and/or induce or encourage employees of EDWARD GRECO, d/b/a MAPLE GROVE DAIRY, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S

MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 338, Local 680, or any other labor organization as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO.

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Excerpts of Hearing Before National Labor Relations Board, Second Region.

IN THE MATTER OF:

MILK DRIVERS & DAIRY EMPLOYEES LOCAL UNION No. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL.

MILK DRIVERS & DAIRY EMPLOYEES LOCAL No. 338, INTERNATIONAL BROHTERHOOD OF TEAMSTERS, AFL.

and

CROWLEY'S MILK COMPANY, INC.
2 Park Ave.
New York, New York
Tuesday, November 1, 1955.

Pursuant to adjournment, the above-entitled matter came on for hearing at 10 a. m.

Before:

SIDNEY L. FEILER, Trial Examiner.

Appearances:

SAMUEL M. KAYNARD,
Counsel for the General Counsel,
National Labor Relations Board.

LLOYD C. ANDERSON,
193 Water Street, Binghamton, N. Y.,
appearing on behalf of the Employer.

PARSONNET, WEITZMAN & ORANSKY,
By: THOMAS L. PARSONNET,
1060 Broad Street, Newark, N. J.,
appearing on behalf of Local 680.

SAMUEL J. COHEN,
50 E. 42nd St., New York, N. Y.,
appearing on behalf of Local 338.

* * * * * *

(73) Mr. Kaynard: Local 338 was not joined as a party to that proceeding.

Moreover, as you look at the records, there was no outstanding charge at that time against Local 338.

Subsequently Judge Hartshore entered a decision which I am not offering in evidence. You may take official notice, as you wish, but I don't think it is binding one way or another either upon the Board or the Trial Examiner. I just mention it to clarify the status of that case.

For the purpose of this proceeding before the Board, we (74) have arrived at a stipulation with respect to submitting the testimony taken at that hearing, plus the various exhibits, plus other additional information. I will proceed to indicate to you what is being stipulated.

Now I will start by saying that all parties hereto stipulate as follows:

If the following witnesses were called and duly sworn, and gave testimony before the Trial Examiner and the Board in this proceeding, they would testify as they did at the hearing before Judge Hartshorne, as reflected in the transcript of that hearing.

The witnesses whose testimony we will introduce by way of stipulation are as follows:

The petitioner, meaning the National Labor Relations Board called Albert J. Blum, Bo Adlerbert.

The record refers to Adlerbert as Adlerberg throughout, but the proper name is Adlerbert.

Mr. Parsonnet: That is right.

Mr. Kaynard: The next is Joseph J. Grenci.

Rudolph Lang.

John McCormack.

Frank G. Thompson.

William P. Coyle.

Frank Berardi.

Roderick D. MacDougall.

(75) Lloyd C. Anderson.

Local 680——

Mr. Parsonnet: May I interrupt for a moment?

Mr. Kaynard: Surely.

Mr. Parsonnet: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Kaynard: Respondent Local 680 called as witnesses on its behalf the following:

Richard Keber.

Isaac Fevang.

It should be noted, Mr. Examiner, that in the transcript which will be introduced, the name was referred to as "Vebang". That is an error. It should be Fevang.

Is that right?

Mr. Parsonnet: Right.

Mr. Kaynard: Wherever it appears improperly, it should be so corrected.

Charles Shuta.

Belfort Del Vecchio. It should be noted here, Mr. Examiner, that the transcript refers to the man's first name as Delfort, instead of Belfort, and it is so changed.

Trial Examiner: With all these corrections I am getting increasingly worried as to whether the transcript reflects (76) the true testimony.

But go ahead, that is up to you people.

Mr. Anderson: Maybe that is just phonetic spelling.

Mr. Kaynard: With respect to that, Mr. Examiner, and with due respect to the reporter here, almost every transcript has certain errors, and undoubtedly this transcript has errors also, but I don't think they are errors of substance. I hope not, anyway.

Mr. Parsonnet: That is my reaction, too.

Excerpts of Hearing Before National Labor Relations Board, Second Region

Mr. Kaynard: Frank Elias. There, Mr. Examiner, the transcript has it spelled "E-l-l-i-a-s," and we wish to strike one "l".

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

I think the transcript reflects an unwillingness on the part of court reporters to cut in sometimes.

I always, somewhere along the proceedings, tell the reporter not to hesitate, but to cut in at any time where there is any question in his mind about what was said, or the spelling of a name.

That goes for this proceeding as well.

Mr. Kaynard: Then the National Labor Relations Board called as a rebuttal witness Elmer O. Goodwin.

Is that right, Mr. Parsonnet?

(77) Mr. Parsonnet: That is right.

Mr. Kaynard: Mr. Examiner, in an effort to reduce the burden of the Trial Examiner, and also in an effort to exclude argument and colloquy between counsel and court which in no way affects the testimony of the witnesses referred to, I have gone through the transcript and I have attempted to exclude those portions which are legal argument or colloquy, and have reduced the submission to you solely to that of the testimony itself.

Of course, in some places it was impossible to excise it completely, but where there were long pages or many pages of such colloquy and argument, I excised them.

I think it would be best now if I went through the various portions, these findings, so that counsel for Local 680 and the other counsel could follow me and see if the portions have been properly excluded.

I think we will not have much trouble, and it will not take too long.

Trial Examiner: I take it this is all part of the stipulation?

Mr. Kaynard: That is right.

May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

(78) Mr. Kaynard: The transcript which is being stipulated, as I have recited and will recite now, is to be marked as General Counsel's Exhibit No. 2. In order to make it clear to anyone who is reading the record, I have started off this exhibit with the title page and the index and list of appearances and exhibits, as recited by the reporter.

Perhaps you might be able to follow me better, Mr. Examiner, if you took the second copy which I have.

Trial Examiner: What you have submitted to me is the entire testimony of this hearing; is that right?

Mr. Kaynard: No. I have submitted to you what I think will be stipulated, with excisions, which I am going through now, and I am running through it.

The first part I am going to introduce as part of General Counsel's Exhibit 2 is the title page, the index, which recites the various names of the witnesses, the exhibits, and then the appearances.

Those are the first five sheets, I believe.

Mr. Parsonnet: Shouldn't that be four sheets, Mr. Kaynard?

Mr. Kaynard: I am sorry, yes. Those are the first four sheets.

Then I have skipped to page 19 to avoid the opening statement and argument between counsel and court. On page 19 I have included that page because it refers to the first exhibit in- (79) troduced in evidence at the bottom of the page.

Excerpts of Hearing Before National Labor Relations Board, Second Region.

Mr. Parsonnet: You are going to include page 20?

Mr. Kaynard: I am not stopping. I have started at page 19 and have eliminated the first 18 pages because of the argument.

Then I have included page 20 which refers to another exhibit, as well as the first exhibit.

Then I have excised page 21, and I have started on page 22 with the testimony of Albert J. Blum.

I have stipulated into this record that testimony of Mr. Blum which runs through page 41.

Then I have stipulated the testimony of Mr. Bo Adlerbert which runs from page 42 to page 46, in part.

Then Mr. Adlerbert's testimony was interrupted by the taking of testimony of Joseph J. Grenci, which runs from page 46 to page 52.

Mr. Adlerbert then resumed his testimony which ran from page 52 to page 59. All that is stipulated.

The next witness was Mr. Lang, whose testimony runs from page 59 to page 74.

Is that right, Mr. Parsonnet?

Mr. Parsonnet: That is right.

Mr. Kaynard: Then Mr. McCormack's testimony, which runs from page 75 through 78.

Page 79 refers to additional exhibits introduced in ev-
(80) idence.

Then the testimony of Mr. Thompson, which commences on page 80, and which runs through page 85.

There is then the testimony of Mr. Coyle which starts on page 85 and runs through page 97.

Then the testimony of Mr. Berardi, which starts on page 97 and runs through 101.

I might indicate at this point that there is overlapping of pages because some testimony starts in the middle of a page.

Excerpts of Hearing Before National Labor Relations Board, Second Region.

The testimony of Mr. MacDougall, which starts at the bottom of page 101 and runs through 104, comes next.

Then there is the testimony of Mr. Anderson, which starts at page 104 and continues through 107.

I have omitted pages 108 through 120 as constituting argument and colloquy. Then we resume.

Mr. Parsonnet: Just one moment, please, Mr. Kaynard.

I have been following you up to now, but I do want to check these pages.

Trial Examiner: We will take a moment until counsel says he is ready to resume.

Mr. Parsonnet: I am in agreement with that.

Mr. Kaynard: Mr. Anderson's testimony resumes on page 121 and runs through 122. I have taken out page 123, Mr. Parsonnet, will you check that?

I think we were talking about adjournment there.

(81) Mr. Parsonnet: Yes.

Mr. Kaynard: I have resumed again with Mr. Anderson's testimony on page 124 through page 129. I have skipped from 129 through 143.

I believe, again, that we have in those pages, argument between counsel and court which I do not think would be of any value to us at this time.

Mr. Parsonnet: To what page did you skip?

Mr. Kaynard: 144.

I have excluded 130 through 143.

Mr. Parsonnet: That is all right.

Mr. Kaynard: Until page 144, we commence with the testimony of respondent's witnesses, and the first witness was Richard Keber. His testimony I have included from page 144 through page 177.

I have omitted page 178 and the pages thereafter through page 183.

Would Mr. Parsonnet please check pages 178 through 183, which I have omitted?

Mr. Parsonnet: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

It is agreed that you are skipping from pages 178 to 183? Is that it, gentlemen?

(82) Mr. Parsonnet: You are including 177?

Mr. Kaynard: Yes. And then I am jumping to 184.

Mr. Parsonnet: Correct.

Mr. Kaynard: Keber's testimony resumes on page 184 and runs through 200, which we are including.

Then the testimony of Isaac Fevang. That starts at page 200 and runs through page 209.

Then there is the testimony of Mr. Shuta, which starts at page 209 and runs through page 221.

Mr. Parsonnet: Are you going to skip something there?

Mr. Kaynard: Yes.

Mr. Parsonnet: I want to draw attention to the fact that what we are about to skip consisted of a stipulation. Do you want to skip that?

Mr. Kaynard: Let me see that.

Yes, I want to skip that. I think there was a discussion and it was not stipulated, as I recall. There was discussion about a possible stipulation with respect to certain Congressional Records or other matters, and ultimately it was left to the parties to arrive at something, and they didn't arrive at any stipulation, so it is tantamount to nothing.

Mr. Parsonnet: Very well. Let me check that to make sure.

Will you look at page 228?

Trial Examiner: Let us go off the record while counsel confer.

(83) (Discussion off the record.)

Excerpts of Hearing Before National Labor Relations Board, Second Region.

Trial Examiner: On the record.

We are up to page 221. Where do you want to go from there, Mr. Kaynard?

Mr. Kaynard: I am jumping to page 239.

Trial Examiner: I don't have those pages here in the duplicate exhibit.

Mr. Kaynard: I will have to supply them to you.

May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Kaynard: We start again with Keber's testimony from page 239 to page 245.

Mr. Parsonnet: On page 240, do you have that, Mr. Examiner.

Trial Examiner: No, that will be supplied.

Mr. Parsonnet: Slightly below the middle of the page it should be, "Castanea." It appears slightly above the middle of the page.

Mr. Kaynard: I have made the correction on this exhibit so that it reflects the true spelling of the name.

We are now at page 245, which is the beginning of the testimony by Mr. Del Vecchio. It runs through page 259.

Then on page 259 we get the testimony of Mr. Elias, which (84) runs through page 269.

I have omitted page 270, page 271 and page 272.

Mr. Parsonnet: After page 269 you skipped to where?

Mr. Kaynard: I skipped pages 270, 271, 272. I believe they contain colloquy between counsel and the Court.

Mr. Parsonnet: All right.

Mr. Kaynard: Then we resume the testimony with the testimony of Mr. Goodwin, which starts on page 273 and runs through page 279.

Excerpts of Hearing Before National Labor Relations Board, Second Region.

I have omitted the remainder of the transcript from page 279 on, which is argument of counsel before the Court.

That constitutes the record of the testimony of the witnesses.

* * * * * * *

(86) Trial Examiner: Why don't you take General Counsel's Exhibit 3 as exhibits in that proceeding, and then list them separately as A, B and C, and so forth, under 3?

Mr. Kaynard: We can do it that way.

In accordance with your suggestion, General Counsel's Exhibit 3 will constitute exhibits that were introduced into evidence in the court proceeding which we have received or stipulated as General Counsel's Exhibit 2 by way of the testimony of the various witnesses. I will enumerate these exhibits.

Perhaps it might be best at this point if we took it step by step and received in evidence General Counsel's Exhibit 2.

Trial Examiner: If the transcript has not as yet been marked for identification, we will mark it as Exhibit 2.

(Whereupon, the documents above referred to were marked General Counsel's Exhibit No. 2 for identification.)

Trial Examiner: You might, Mr. Kaynard, mark the exhibits as such. Then you could complete your stipulation and then offer these exhibits in evidence.

Mr. Kaynard: I offer to be marked for identification General Counsel's Exhibit 3, the following documents.

(Whereupon, the documents above referred to were marked General Counsel's Exhibit No. 3 for identification.)

Excerpts of Hearing Before National Labor Relations Board, Second Region.

Mr. Kaynard: 3-A is a letter from Richard Keber, signed (87) by Richard Keber, Secretary-Treasurer of Local 680, addressed to "Gentlemen," and dated March 9, 1955. To relate it to the previous testimony in General Counsel's Exhibit 2 for identification, that exhibit was marked as P-1.

3-B is a letter signed by Richard Keber, addressed to "Dear Sir and Brother," dated March 9, 1955, together with the previous 3-A attached thereto.

That was formerly known as Exhibit P-2 in the previous proceeding before this District Court.

3-C is a letter from North Jersey Dairyland to local Union 680, dated April blank, 1955, with a postal receipt for registered mail in the upper left hand corner. That previously was marked P-3.

3-D is a letter from Joseph Thompson & Sons to Local 680, dated March 31, 1955, which was previously known as P-4.

3-E is a letter from Richard Keber to Thomspon's Dairy dated April 1, 1955, formerly marked as P-5.

May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Kaynard: 3-F is the union contract known as the Metropolitan Area Agreement, and formerly marked as D-1.

Mr. Examiner, with respect to this exhibit apparently we only have one copy. I would ask leave to file only one copy (88) of the exhibit rather than a duplicate as required by the instructions.

Trial Examiner: Are there any objections?

Mr. Parsonnet: No objections.

Excerpts of Hearing Before National Labor Relations Board, Second Region.

Trial Examiner: Permission is granted so to file the one copy.

Mr. Kaynard: Mr. Examiner, there is reference in the transcript of testimony which is General Counsel's Exhibit 2, to a document known as D-2, which is the original of the document P-3.

I will mark that as General Counsel's Exhibit 3-G, formerly known as D-2.

You will note from the discussion that it is the original of a previous Exhibit 3-C. It differs in that this 3-G does not have the post office registry receipt attached to it. It also indicates some remarks in the upper left hand corner which could not be seen by virtue of the attachment of the postal receipt.

That would conclude the testimony and exhibits which we are stipulating. I believe before we go any further, as far as stipulations are concerned, that we stipulate to this portion at least, because there are additional parts of stipulations which do not refer to testimony or exhibits.

Trial Examiner: What is the stipulation again? Let us have it stated.

(89) Mr. Kaynard: The stipulation is that if witnesses were called, duly sworn, and testified, they would testify as reported in the transcript which is General Counsel's Exhibit 2.

If documents were offered in evidence, and a foundation laid and duly qualified, they would be received in evidence as indicated as General Counsel's Exhibit 3 with the various letters.

Mr. Parsonnet: I so stipulate.

Mr. Kaynard: It is further stipulated that all the objections which were made by counsel at the hearing with respect to statements of testimony or lines of inquiry or lines of questioning, or to documents, are equally appli-

cable and are made to you, Mr. Examiner.

Trial Examiner: So I would not necessarily be bound by the ruling that appeared on the record?

Mr. Kaynard: That is right.

Mr. Parsonnet: That is correct. In the event I objected to the offer of such testimony, I want the opportunity to present that objection to you, Mr. Examiner.

Trial Examiner: I take it that you would merely restate it as indicated in that other record.

Mr. Parsonnet: That is right.

Mr. Kaynard: And that applies to General Counsel.

Trial Examiner: That is stipulated.

How about you, Mr. Cohen?

(90) Mr. Cohen: I will stipulate that if witnesses were called to testify in Case No. 2-CC-333, they would so testify.

I would object to the evidence, all of this testimony as not binding on Local 338, and that it has no proper place in Case No. 2-CC-355, as in no respect relevant, competent or material with respect to Local 338 or in Case No. 2-CC-355; and in addition, I would ask leave to include in my objections, Mr. Examiner, all the grounds and all the objections mentioned in my earlier motion to sever and motion to dismiss the complaint.

Trial Examiner: All right.

How about you, Mr. Anderson?

Mr. Anderson: I will stipulate that it is my understanding that what we are stipulating to is that this transcript may be received with the same force and effect as though the witnesses were actually here and testified.

Trial Examiner: That is the way I understand, that you people are stipulating that if these people were called to this proceeding, they would testify as indicated, that if the same questions were asked them as appear in that

record, they would testify as indicated under the portions of the transcript and the exhibits introduced here.

The parties to that proceeding, namely, General Counsel, and I believe the company, appeared there, and Local 680 would press any objections to the receipt of evidence as it appears (91) in the record, leaving it for ruling here.

Of course Local 338 was not a party, and they have a general objection as to whether this is binding on them at all, which I would have to rule on in the course of specific testimony.

I understand that.

That, I understand, is the extent of the stipulation you people have made.

I take it that, as part of that, General Counsel wants to offer General Counsel's Exhibits 2 and 3 in evidence.

Mr. Kaynard: That is right.

Trial Examiner: Is there any objection to their receipt, other than a restatement of objections you gentlemen have already given me?

Mr. Cohen: I make the same objection as stated a moment ago.

Mr. Parsonnet: No.

Trial Examiner: I will receive them with the limitations you people have put on them. I do that really as a basis for discussing them a little further with you on the record.

(Whereupon, the documents above referred to were marked General Counsel's No. 2 and 3-A through 3-G and were received in evidence.)

* * * * * *

(97) Mr. Kaynard: The parties have additional stipulations by way of a statement and exhibits.

Excerpts of Hearing Before National Labor Relations Board, Second Region.

Will the reporter please mark as General Counsel's Exhibit 4 the following document entitled "Agreement." It refers to the Ice Cream Drivers and Local 680.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

Mr. Kaynard: I offer in evidence General Counsel's (98) Exhibit 4.

Mr. Parsonnet: No objection.

Mr. Cohen: I make the same objection as has been made previously, and on the same grounds.

Trial Examiner: You want a continuing objection, I think, as to documents offered in evidence relating to Local 680 and not binding on your Local, Mr. Cohen?

Mr. Cohen: Documents or other evidence. That will then relieve me of the necessity of making separate objections each time such evidence is introduced.

Trial Examiner: Yes, that is right.

The agreement just referred to by Mr. Kaynard is received in evidence, except that I would like, again, as that is a long document, to ask you if there are certain specific paragraphs; if so, please indicate that.

Mr. Kaynard: We will indicate that in our oral argument to you.

I may indicate, however, Mr. Examiner, that one of the main purposes of the contract is a matter of defense by respondent union in the assertion of the hot cargo provision. There is also contained in the contract a recital as to the duties of the shop steward.

That refers both to this contract, which is now Counsel's Exhibit 4, and General Counsel's Exhibit 3-F, previously admitted, which is the milk contract, as distinguished from the (99) ice cream contract which is General Counsel's Exhibit 4.

In both instances the important points, which I believe both parties urge consideration of, is the hot cargo provision and the shop steward duties. I believe that in the milk contract it is Paragraph 18-D.

Mr. Parsonnet: I do not concede it was 18-D. I contend it was all of 18.

Mr. Kaynard: 18 in the milk and 5 in the ice cream?

Mr. Parsonnet: I think so.

(Whereupon, the document previously marked General Counsel's Exhibit No. 4 for identification was received in evidence.)

* * * * * *

(100) Mr. Kaynard: Now will the reporter please mark as General Counsel's Exhibit 5 the following document, which is entitled "Local 680, Companies to the Standard Agreement."

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 5 for identification.)

Mr. Kaynard: The term "standard agreement" refers to the milk contract which had previously been admitted as General Counsel's Exhibit 3-F.

(101) Is that right, Mr. Parsonnet?

Mr. Parsonnet: That is right.

Mr. Kaynard: This is a list of the various companies who are parties or who have been parties to that agreement.

Will the reporter please mark as General Counsel's Exhibit 6 for identification, the following document which is entitled "Companies Party to the Standard Ice Cream Contract."

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Trial Examiner: The term "Standard Ice Cream Contract" refers to the standard ice cream contract which has been in evidence as General Counsel's Exhibit 4.

The list, General Counsel's Exhibit 6 for identification, states the names of the various companies who are and who have been parties to that contract.

Trial Examiner: Are you also stipulating that they were parties to that contract at all times material herein?

Mr. Kaynard: That is right.

Mr. Parsonnet: Right.

Mr. Anderson: That is right.

Mr. Kaynard: I offer in evidence General Counsel's Exhibits 5 and 6.

Trial Examiner: Is there any objection?

(No response.)

Trial Examiner: There being no objection, they may be (102) received in evidence.

(Whereupon, the documents previously marked General Counsel's Exhibits Nos. 5 and 6 for identification were received in evidence.)

Mr. Parsonnet: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Kaynard: The parties further stipulate that Local 680 sent to the companies listed on General Counsel's Exhibit 5, who were parties to the milk contract, received in

evidence as General Counsel's Exhibit 3-F, letters dated March 9 which have already been received in evidence as General Counsel's Exhibit 3-A; it is further stipulated that Local 680 sent to the companies listed on General Counsel's Exhibit 6, who were parties to the general ice cream agreement which is marked General Counsel's Exhibit 4, a letter identical with General Counsel's Exhibit 3-A, except that reference is made therein to Section 5-D of the ice cream contract, rather than 18-D of the milk contract, and Section 5-D is quoted verbatim in that letter.

Trial Examiner: Is it so stipulated?

Mr. Kaynard: It is so stipulated.

Trial Examiner: Off the record.

(Discussion off the record.)

(103) Trial Examiner: On the record.

Mr. Kaynard: Will the reporter please mark as General Counsel's Exhibit 7 the document entitled "Milk List of Shop Stewards Who Received Letters."

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

Mr. Kaynard: It is stipulated that the individuals named thereon as shop stewards, with the name of the company where they are shop stewards, indicated next to the name of the individuals, received letter previously received in evidence as General Counsel's Exhibit 3-B.

Trial Examiner: I understand it has been stipulated that the shop stewards listed in General Counsel's Exhibit 7 received copies of Letter 3-B.

Mr. Kaynard: And just for the record, 3-B is a letter for shop stewards which had been appended to the 3-A letters.

Is that stipulated?

Mr. Parsonnet: Yes, it is so stipulated.

Mr. Kaynard: I offer the stipulation and I offer in evidence the Exhibit 7.

Trial Examiner: Is there any objection?

Mr. Parsonnet: No objection to the receipt of the exhibit.

Trial Examiner: It will be received in evidence as General Counsel's Exhibit 7.

(104) (Whereupon, the document above referred to, previously marked General Counsel's Exhibit No. 7 for identification, was received in evidence.)

Mr. Kaynard: Will the reporter mark as General Counsel's Exhibit 8 document entitled "Ice Cream List of Shop Stewards Who Received Letters."

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 8 for identification.)

Mr. Kaynard: It is stipulated that the individuals listed thereon and the names of the companies where they are shop stewards indicated next to their names, received letters previously received in evidence as General Counsel's Exhibit 3-B, with the modification or explanation recently applied to Letter Exhibit 3-A, when sent to companies who were covered by the ice cream contract, namely, that the appended letter, when sent to the ice cream shop stewards, included a reference to Section 5-D, and quoted Section 5-D of the Ice Cream Contract rather than Section 18-D of the milk contract.

Mr. Parsonnet: That is right.

Excerpts of Hearing Before National Labor Relations Board, Second Region.

Mr. Kaynard: I offer the stipulation and I offer in evidence also General Counsel's Exhibit 8.

Trial Examiner: Is it so stipulated?

Mr. Parsonnet: It is so stipulated.

Trial Examiner: Is there any objection to the offer of the exhibit?

(105) (No response.)

Trial Examiner: Hearing no objection, it is received in evidence.

(Whereupon, the document previously marked General Counsel's Exhibit No. 8 for identification was received in evidence.)

Mr. Kaynard: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Kaynard: It is further stipulated that some of the shop stewards posted the letter and attachment marked as General Counsel's Exhibit 3-A with modifications as to Sections 18-D and 5-D.

Mr. Parsonnet: Don't refer to that, because that will—

Trial Examiner: Excuse me. Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Parsonnet: We will put it this way. It is further stipulated that some of the shop stewards posted on the bulletin boards in their plants copies of the letters they had so received.

Trial Examiner: Is it so stipulated?

Mr. Kaynard: So stipulated.

Mr. Parsonnet: Yes.

(106) Mr. Anderson: Yes.

Mr. Kaynard: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Kaynard: Where will the reporter please mark as General Counsel's Exhibit 9 the following document signed by Richard Keber, dated September 26, 1955, addressed to "Gentlemen" to the companies who were parties to the milk contract as named in General Counsel's Exhibit 5, already received in evidence?

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Mr. Kaynard: It is not known at the present time by the parties whether or not identical letters were sent to the parties to the ice cream contract.

Mr. Parsonnet: It is so stipulated.

Trial Examiner: Do you offer that letter in evidence, Mr. Kaynard?

Mr. Kaynard: I offer the letter in evidence.

Mr. Parsonnet: No objection.

Trial Examiner: It will be received in evidence.

(Whereupon, the document previously marked General Counsel's Exhibit No. 9 for identification was received in evidence.)

* * * * * *

Excerpts of Hearing Before National Labor Relations Board, Second Region.

(142) THOMAS L. PARSONNET, a witness called by and in behalf of Respondent Local 680, testified as follows:

The Witness: On April 1, 1955, Mr. Keber came to my office and showed me a letter which he had received from Joseph Thompson & Sons, which is in evidence as General Counsel's Exhibit 3-D, and is dated March 31, 1955.

In order that the Trial Examiner may follow the situation a bit, I will just describe to him the letter from the Thompson Company as being the letter in which he raised the question as to whether or not there was a labor dispute between the union and Crowley.

Under the circumstances, they asked for arbitration to determine whether they should comply with our request not to handle Crowley's milk. They also asked that the members of the Local be instructed to continue work despite the continued handling of Crowley's milk products.

(143) Mr. Keber asked me to prepare a reply to that letter which he would sign.

Exhibit 3-E is the letter which I prepared for Mr. Keber's signature.

It is indicated therein, describing it shortly, that the company had had plenty of time to request arbitration prior thereto, that it had not done so, that it was pretty late now; therefore, although we would agree to arbitration, we said meanwhile, however, our members will not handle Crowley's milk or milk products.

I dictated that letter in Mr. Keber's presence. Mr. Keber raised this question with me. He said, "Tom,"—and we called each other by our first names—he said, "Tom, doesn't that do exactly what you don't want done, that is, violate the Act by telling our people not to handle the products?"

I said, "This does not tell our people to handle the product. This merely tells the employer that the people will not handle the products."

Mr. Kaynard: Objection, Mr. Examiner, at this point.

I object to any conversation which took place between Mr. Parsonnet and Mr. Keber, particularly on the point of what this letter meant or what its legal implication would be or might be.

I submit that this letter was sent by Mr. Parsonnet. As far as that point was concerned, I did not interpose any objec- (144) tion.

But I do object to any testimony which may be given which might interpret this letter. I submit to you that if the letter is unambiguous on its face, that if it is subject to interpretation by way of ambiguity or otherwise, that is for you to resolve, apart from any interpretation imposed by Mr. Parsonnet, or which he might have meant to indicate by the letter or the terms therein.

Mr. Parsonnet: Let me answer that as follows;

At the hearing before Judge Hartshorne, an attempt was made to show that we had issued instructions to our members employed by the Thompson Company because of the nature of this letter, which said that our members will not handle Crowley's milk.

I am attempting to show, and I will connect it up, that by reason of my advice, that I gave to Mr. Keber, this letter was sent, but not communicated to any of the employees.

Clearly attempting to comply with the decision, an opinion of the Second Circuit Court of Appeals in the Conway case which, if you will recall, tells that a threat of a strike to a secondary employer was not in violation of 8 (b) (4).

Trial Examiner: I think we have the letter. I don't think conversation between counsel for the union and an

officer, I believe, of the union, or a representative are admissible here, there being no ambiguity in the letter.

(145) I don't rule out any other testimony that may be presented as to what instructions the union did or did not give its membership. We can take that out.

But as between counsel and an officer of the union, I don't think that testimony should go in.

The Witness: May I go on further, then?

Trial Examiner: Yes, we have that letter being drafted and sent.

Mr. Kaynard: You will strike the conversation?

Trial Examiner: I will not strike it. I have ruled. Let the record stay as it is.

The Witness: Mr. Keber called his office, put a girl on the phone and I dictated the letter over the phone to a girl.

Mr. Keber then got on the phone and instructed the girl to prepare it for his signature but not promise to prepare any copy for any of the stewards.

That was in my office over the phone, and at my advice.

Trial Examiner: Have you finished your testimony?

The Witness: That is all.

Trial Examiner: Is there any cross examination?

Mr. Kaynard: None.

Mr. Anderson: No.

Trial Examiner: That finishes that testimony.

* * * * * *

Exhibit GC-2.

Stipulated Testimony.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil No. 496-55

CHARLES T. DOUDS, Regional Director of the Second Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner,

vs.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL.

Respondent.

Newark, New Jersey, Thursday, June 9, 1955.

Before:

THE HONORABLE RICHARD HARTSHORNE, *U. S. D. J.*

Appearances:

CHARLES HENDERSON, ESQ., for petitioner, and SAMUEL KAYNARD, of Counsel.

LLOYD C. ANDERSON, ESQ., Attorney for charging Party.

THOMAS PARSONNET, ESQ., Attorney for respondent.

* * * * * *

(19) Mr. Carey: Will your Honor permit me to introduce to the Court, Mr. Anderson, the general counsel for the Dairy League. He is a member of the Bar of the District

Exhibit GC-2.

courts of both Pennsylvania and New York, and he has appeared in our Third Circuit, and he is a member of the Supreme Court of the State of New York, and with your permission I introduce him at this time, and ask that he be permitted to speak on behalf of his clients in this matter.

The Court: You are Mr. Anderson and you are Mr. Henderson (indicating).

Mr. Anderson: That is correct, sir.

Mr. Henderson: May it please the Court, before I put on any oral testimony I have requested the Court to mark for identification two letters from the union, and it is my understanding that Mr. Parsonnet stipulates that these letters were sent by the union.

Mr. Parsonnet: Yes, sir. In order to be specific about it if your Honor would permit that they be marked in evidence I will state to whom and how they were sent.

The Court: Don't they show on their face?

Mr. Parsonnet: Not precisely, no.

The Court: All right, mark them.

The Clerk: Copy of letter from Richard Keber dated March 9, 1955, will be marked Exhibit P-1, and photostatic copy of letter from Richard Keber, dated March 9, (20) 1955 will be marked Exhibit P-2 in evidence.

(Received and marked Exhibit P-1 and P-2, respectively.)

The Court: Perhaps I could best understand them if I held them in my hand while you made the explanation.

Mr. Parsonnet: Exhibit P-1, sir——

The Court: Both bearing the same date?

Mr. Parsonnet: That is correct, Exhibit P-1 is a letter which was sent by the union to all employers with whom the union has collective bargaining contracts.

The Court: Yes.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Direct.

Mr. Parsonnet: Exhibit P-2 is a letter sent by the union in which was included a copy of Exhibit P-1 to all of the shop stewards of the union. I think it might perhaps clarify the situation if I explain that the union has approximately 50 contracts with employers with approximately 70 plants and that there are stewards at every one of them.

The Court: The union steward has a little more authority than a ship steward. He not only feeds people but he sees that they do their work.

Mr. Parsonnet: The contract itself, sir—and for some unknown reason I didn't bring a copy along—I think you (to Mr. Henderson) may have one that can be introduced—indicates the authority of the stewards to see to it that the employer observes the contract.

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(22) Albert J. Blum, called by petitioners was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. Blum, what is your address? A. My home address?

Q. Yes. A. 443 Walton Road, Maplewood, New Jersey.

Q. What is your occupation? A. I am president of the International Milk Company.

Q. And what is the nature of the business of that company? A. Pasteurization and bottling and handling milk and dairy products.

The Court: What company?

The Witness: International Milk Company.

Q. Do you also have a connection with Town Talk Ice Cream Company? (23) A. Yes, sir.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Direct.

Q. What is that connection? A. Well, Town Talk Ice Cream Company is a subsidiary of International Milk Company and manufactures ice cream under that name.

Q. Are you president of that company also? A. Yes.

Q. What is the relationship of International and Town Talk with Crowley's? A. Well, Town Talk Company is a subsidiary of International Milk Company.

Q. What is the relationship of International Milk Company with Crowley? A. Oh, I'm sorry. I misunderstood. Well, we were a customer. We had a contract with Crowley Milk Company to supply us certain items of dairy products used in our manufacturing.

Q. And have they been in the past supplying you with such products? A. Yes, they have for over a year. I would say a year and a half.

Q. About how much? What would be the dollar value per year of your purchases from Crowley? A. Oh, I would say per year around $200,000 a year.

Q. Now, are your employees represented by a labor organization? (24) A. Yes, sir.

Q. Which one? A. Local 680 of the Teamsters Union.

Q. What is the name of the shop steward at International? A. Mr. Shuta, Charles Shuta.

Q. Is he also the steward for Town Talk? A. Yes, sir.

Q. You have a bargaining contract with Local 680? A. We have, yes.

Q. Does that have a "hot cargo" clause in it of the type that is quoted in the letter that you received? A. I am not familiar with what a "hot cargo" clause is, but it has a clause in it that has been read here today which states that if the Union——

The Court: Do you want to have him read this clause from this letter and see if that is it?

Mr. Henderson: Yes, sir.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Direct.

(Court hands exhibit to witness.)

The Witness: That is the clause in the contract with the Union, yes.

Q. Mr. Blum, the letter that his Honor has just handed you and which you have just handed back to him, which is Petitioner's Exhibit P-1, did you receive a copy of that from the Union? A. We did, yes.

(25) Q. What did you do about it? A. Well, we at first of course, we didn't do anything about it except to talk to the Crowley Milk Company and we told them of the letter that we had received and tried to gain information as to what our status would be. We informed them also of our contract with the Union, and that it was up to someone else besides ourselves to determine whether or not we could properly continue to purchase products from them.

The Court: To continue to do what?

The Witness: To continue to purchase products from them.

Q. Did you continue ordering from Crowley? A. Yes, we did. One shipment came in after the 1st of April which was the deadline placed on that letter.

Q. Do you recall what happened? Do you recall the date when that shipment came in? A. Yes, I think it was on April 4th.

Q. That was Monday? A. I believe it was a Monday. I think it was.

Q. Can you describe that incident for the Court?

Mr. Parsonnet: If he knows of it personally.

The Witness: I think I know what I testify to is what I know personally.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Direct.

Q. Yes. A. When I came to the plant at approximately a quarter to (26) 9 in the morning the Crowley Milk Company truck was in our garage away from the platform, and I inquired as to why it had not been unloaded, and was informed that the shop steward had told the platform men not to unload it.

Mr. Parsonnet: I object and ask that the statement he was informed that the shop steward had told the platform men not to unload it be stricken.

The Court: That is hearsay. You see, Mr. Blum, what we must have is someone who heard the shop steward so say.

The Witness: Well, the order clerk whose name is Rothbard is the one that told me that the shop steward had told him——

Mr. Parsonnet: I object.

The Court: Is the order clerk here?

Mr. Henderson: No, he is not, sir.

Mr. Henderson: I have no wish to pursue the conversation with the order clerk. That simply leads into the next conversation.

Q. Now after your conversation with Rothbard did you have a conversation with anybody else? A. Yes. I then sent for the shop steward, Mr. Shuta, and asked him to come in to my office which he did, and I asked him whether or not he had issued the orders not to unload the truck of cream, and so on, and he said yes, he did, and (27) then I called up Mr. Keber to find out whether or not the instructions which Mr. Shuta had given were properly given by the Union, and Mr. Keber told me that the instructions were from their office. The reason I was——

Q. Mr. Keber, who is he?

Exhibit GC-2.
Albert J. Blum, for Petitioner—Direct.

Mr. Parsonnet: Secretary-treasurer and authorized official of the Union.

The Witness: May I continue to explain, or do you want to ask me something else as to the reason I went into the matter so fully?

Q. Go ahead and explain. A. Well, as I said before we had a contract with Crowley Milk Company and we also have a contract with the Union. So I felt it necessary to establish very definitely that the fact that we were not able to buy from Crowley was through no fault of our own. We had no wish to violate his contract and certainly no wish to violate the Union contract, so our position was right then at that point——.

Q. Did you inform Mr. Keber of your contract with Crowley? A. Yes, I did. I told him we had a contract.

The Court: You didn't tell Keber what you were going to do?

The Witness: Yes, I told him as long as the instructions came from, I told him, the goods would have to go (28) back. I told him that.

Q. Did you then discontinue ordering from Crowley? A. After that we did, yes.

Q. Why did you discontinue ordering from Crowley? A. Well, the fact that we did have this contract with the Union and the fact that we didn't know whether there was any labor dispute going on or not—we had no knowledge or way of determining the truth of that particular statement and since the Union had already said they wouldn't unload it there was not much point in our going ahead and ordering more, so we didn't.

Q. Were you dissatisfied with Crowley's products? A. Oh no, not at all.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Direct.

Q. When the present controversy between the Union and Crowley is cleared do you intend to resume ordering from Crowley?

Mr. Parsonnet: I object. I think that that is immaterial.

The Court: Well, I suppose that depends, Mr. Parsonnet. He has already said that he told Keber the goods would have to be returned due to the contract with the Union. That was the cause.

Mr. Parsonnet: That's right.

The Court: Now if it is admitted that was the cause we need not go into all these fringes.

(29) Mr. Parsonnet: I have no objection to that previous testimony, sir, and I assert that Mr. Blum's decision not to continue with Crowley was a result of the Union contract.

Q. Mr. Blum, did you know of the Union contract when you ordered from Crowley, the shipment that came on April 4th? A. I did, yes, sir.

Q. But you nevertheless ordered from Crowley? A. That's right.

Q. Would your men handle it?

Mr. Parsonnet: I object unless Mr. Blum has a direct and personal knowledge.

Mr. Henderson: Your Honor, he has testified that the steward told him he wouldn't unload.

The Court: Well, at the time of this order to Crowley on April 4th you had not had this talk with Shuta, had you?

The Witness: No, sir.

The Court: So you didn't know what was going to happen, is that it?

The Witness: I would say that is correct.

The Court: You had the contract with Crowley and you thought you would pursue that contract and wait and see what happened?

The Witness: That is exactly correct.

(30) Q. Had you had any conversations with representatives of the Union before April 4th, Mr. Blum? A. Well, when we got the letter—of course, I have forgotten. I don't think I had any definite conversations with any union official and I don't even recall any with any of the shop stewards or any individual. It was a matter that had not come up.

Q. Do you recall whether you had any conversation with Mr. Shuta? A. No.

Q. Specifically, Mr. Blum, did you have a conversation with Mr. Shuta shortly after the letter came in from the Union?

The Court: Shortly after what came in?

Mr. Henderson: Shortly after the letter.

The Court: P-1.

Mr. Henderson: P-1, yes, after that came in.

The Witness: May I refer to my notes? I don't recall it.

The Court: If you don't recall you can look at your notes, yes.

The Witness: Yes, you are right, I d'd have a conversation beforehand.

Q. When was that? A. I have not got the exact date but I would say it was about a week previous to April 4th.

(31) The Court: Before what?

The Witness: Before April 4th.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Cross.

The Court: In other words, after receipt of the letter but before the last talk with Crowley?
The Witness: That is correct, sir.

Q. What was that conversation? A. As to what happened. I explained to the shop steward we had a contract with Crowley Milk Company for goods and that this letter as I read it at least would indicate that we were no longer able to receive goods from them, but that I wanted to be sure that we weren't going to be in breach of any contract, so we would have to let a shipment come in. We were ordering a shipment the week before.

Q. What did he say? A. I can't remember that except to state I think he did indicate that it wouldn't be handled, it wouldn't be unloaded.

Q. Did he indicate why? A. I can't answer that specifically excepting I think that the clause in our contract, Section 18, was referred to as the reason for it, not permitting the union people to handle that—those goods.

Q. Did he indicate anything about whether there had been any instructions on the matter? A. Not at that time. That was developed later.

Mr. Henderson: No further questions.

(32) *Cross examination by Mr. Parsonnet:*

Q. Mr. Blum, in this last conversation that you testified had taken place after March 9th, would you say that was about a week before April 4th? A. Yes, sir.

Q. It was a very short conversation, wasn't it? A. Yes, it was.

Q. Isn't it a fact that what happened at that conversation was that you said to Mr. Shuta, "What are we going to do for cream and condensed milk"? A. No, I didn't say that to him.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Cross.

Q. Didn't he say simply to you that you had gotten the letter from the Union, that he was asking you in a nice way to cooperate? A. No, I don't think that those are the words that were used. The discussion with him was to inform him that we had a contract and we felt that we ought to not violate lightly, or for any reason, violate a contract without knowing the grounds upon which we violated it and I told him that and said we will have to undoubtedly order a shipment and see what happens. That is the conversation we had.

Q. Now as a matter of fact were you not told that on April 4th, Mr. Shuta did not order the platform man not to unload but he stopped the driver of the Crowley truck and told him that he ought to know there was dispute on? (33) Isn't that a fact? A. As to that I wouldn't know. He didn't tell me that.

Q. You have no personal knowledge of what he did on that day? A. No.

Q. Now when you called him in the fact is that Mr. Middleton and one or two representatives of Crowley Company were present at the time. A. There was one representative of Crowley Company who was in my office when I asked Mr. Shuta to come in.

Q. And all you said to him was concerning the fact that you had a contract with Crowley Milk Company, isn't that a fact? A. Yes, and I asked him specifically whether he had given instructions not to have the goods unloaded, and he said yes.

Q. Are you positive that he said he had instructed that it should not be unloaded? A. I am positive of that, sir.

Q. Or isn't it a fact, Mr. Blum, that what he could have said is that he had stopped the Crowley man from making the delivery? A. Well, of course I didn't make any reporting of the conversation and I don't like to place words

in anybody else's mouth, but in order to, as I have already testified, in order to feel sure I was on safe ground in the matter I called (34) up Mr. Keber and he told me the same thing.

Q. Did you, Mr. Blum, give any directions to any single employee of International or Town Talk that they should after April 1st deliver, handle and process the Crowley products? A. No, sir, I did not.

The Court: You are talking now about your own employees?

The Witness: That's right. I did not instruct any of our own employees to handle or not to handle the Crowley products.

Q. You made no request, request of them to handle the product? A. No.

Mr. Parsonnet: That is all.

Mr. Henderson: No further questions——

Re-direct examination by Mr. Henderson:

Q. Mr. Blum, in regard to that last question, did you customarily order your employees to do work?

Mr. Parsonnet: I object, if your Honor please. The issue here deals with the decision of Chairman Farmer in the McAllister case. What he customarily does is of no importance. The question is whether they were directed in violation of the existing collective bargaining contract to handle the Crowley products.

The Court: Now, Mr. Parsonnet, if you two gentlemen (35) could agree on what that case said that would be fine, but you disagree. One says it

means one thing and the other says it means the other. Therefore I would say you both must pursue the facts in the light of the differing interpretations.

Mr. Parsonnet: May I call your Honor's attention to the fact that the inquiry here is not in pursuit of Mr. Henderson's contention either. The inquiry here is whether he customarily gives such orders. Now that doesn't mean anything in connection with this case.

The Court: I cannot attempt to restate accurately his contention. Do you say it does support your contention?

Mr. Henderson: My contention would be, your Honor, that Mr. Blum's employees were expected to handle things as they came in.

The Court: Yes, I know, but what is your contention as to the holding in the Conway case in that regard?

Mr. Henderson: Your Honor, I was trying to play down the significance of the question that Mr. Parsonnet asked as specific instructions. My contention would be there was a standing order that the men handle goods as they come in. I conceive that specific instruction in this case would be stronger of course and we have other incidents where that happened——

The Court: Why not ask him whether there was a (36) standing order?

Mr. Henderson: That is what I tried to get to, your Honor.

The Court: All right. I take it there may be such things as SOP in business as well as in the military, standard operating procedure.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Re-cross.

Mr. Parsonnet: That would be true except for the fact that this case was taken out of the standard operating procedure by the letter of March 9th.

The Court: I think you are at liberty to ask him if there were any orders as to his men's handling the product coming in.

Q. Mr. Blum, what if any were the orders, standing orders to your men on handling products coming in? A. There were no specific detailed orders except whatever products came in are to be unloaded and put in their proper place in the cold storage or in other places where they are to be used.

Q. Would that apply to Crowley Products coming in? A. All products.

Re-cross examination by Mr. Parsonnet:

Q. Mr. Blum, with respect to that may I ask you did you expect that this standing order would apply to Crowley after you received the letter of March 9th? A. I didn't make any interpretation of it.

(37) Q. And when Mr. Keber affirmed the letter of March 9th you consented to it, is that not a fact? A. I asked him whether the instructions came from him and he said yes, and then of course the goods went back so in that sense I did.

Q. You consented to the Union procedure? A. Yes.

The Court: You consented, in other words, to the obliteration of the standing order in regard to that shipment?

The Witness: Yes, I would say so, your Honor, in that case since the product couldn't be unloaded there was no point in allowing it to remain in the warehouse and spoil in the garage.

Exhibit GC-2.
Albert J. Blum, for Petitioner—Re-direct.

Re-direct examination by Mr. Henderson:

Q. Would you say you consented volunartily to that, Mr. Blum, or would it be under duress? A. I wouldn't say it was under duress. It was a question as to who was right. There was the contract on the one hand and the contract on the other hand, and we had to try to within the scope of those two contracts—to try to do what we thought was right.

Q. Could you have lived up to your contract with Crowley if you had wanted to?

Mr. Parsonnet: I object to that, that is pure speculation.

(38) Mr. Henderson: I am not so sure it is speculative. He has testified that in his opinion his men would not have handled the goods and that is why he cut off the order, so the goods wouldn't be ordered and spoiled.

The Court: It comes down to this: Why did you consent to wiping out of your standing order as to Crowley shipments? Answer that question.

The Witness: You wish me to answer that question?

The Court: Answer that question.

The Witness: Why did I consent to the wiping of the order out to allow them to be unloaded?

The Court: Why did you consent to wiping Crowley shipments out of the general order about unloading of arriving goods?

The Witness: All right, sir. The actual definite reason I have already stated, it was a question then of determining whether or not we were in violation of a contract with Crowley or whether we were going to be in violation of the Union contract, and since

they specifically informed us that their instructions were not to unload it, we thought it was about the only thing we had left to do, so we informed Crowley of that and they took the shipment back.

The Court: In other words, you decided to violate Crowley's contract instead of the Union contract?

The Witness: That is about what it amounts to.

(39) The Court: Now the question is why.

The Witness: Having been informed that the product would not be unloaded and since it was a part of our contract with the Union, I presume that the Union could well have used other types of pressure on us had we gone ahead and unloaded in some other way. We couldn't see any point for us to make a determination as to who was right or who was wrong.

The Court: You say you feared other pressure from the Union. What pressure are you referring to? Pressure given under the Union contract or pressure extra Union contract?

The Witness: Primarily under that letter where employees are not required to handle goods or to process them if they come from—I think the word is employers or manufacturers who are in labor disputes with the Union.

The Court: Yes, you have already said that. To live up to that clause you decided to ship back the Crowley goods. You said you did that because you feared further Union pressure if you didn't. I am asking you what further pressure you feared, pressure under the Union contract or outside the Union contract?

The Witness: Well, primarily pressure under the Union contract. The Union under those conditions might refuse to permit those goods to be handled at any time and they would simply stay there in cold storage and perhaps other items might be tied up. I don't know exactly what pressure (40) if any the Union would have used.

The Court: You see, I have never laid eyes on your contract with the Union, so I don't know what authority there is.

Mr. Parsonnet: May I offer this as the contract with the Union as Exhibit D-1 with your consent?

Mr. Henderson: Yes.

The Clerk: Copy of contract will be marked Exhibit D-1 in evidence.

(Received and marked Exhibit D-1.)

The Court: Would it help to have either of you gentlemen who are familiar with this contract call the witness's attention to certain of the pertinent permitted pressures, let's say in that contract, and ask him if he had that or something else in mind?

Mr. Parsonnet: I would be very glad to.

The Court: Isn't that about it?

By Mr. Parsonnet:

Q. Mr. Blum, did the Union make any threats whatever? A. No, they did not.

Q. Did they warn you of anything they would do in the event you failed to cooperate? A. No, they did not.

Q. You know, do you not, that the only sanctions contained in the contract consist of resort to arbitration, do you not? (41) A. Well, generally I would say yes, but it wouldn't take away the right from the Union to picket—to have a picket line around the plant I don't believe.

Exhibit GC-2.
Bo Adlerberg, for Petitioner—Direct.

Q. That is merely your guess as to what might happen? A. Yes. I would think so, yes.

Q. You know, do you not, that there is no—a no strike clause in the contract? A. I know that, yes.

Q. Have you ever found that this Union has violated any provisions of the contract with you or with anyone else? A. No, I don't know. They have not.

Q. Would you not assume that putting a picket line in front of the place would be a violation of the no strike clause? A. I presume it definitely would.

Q. And there was no threat of a picket line? A. No what?

Q. No threat of a picket line? A. No.

Mr. Parsonnet: That is all.
Mr. Henderson: No further questions.
The Court: That is all on both sides?
Mr. Henderson: Yes.
The Court: That is all.

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(42) Bo Adlerberg, called as a witness for the petitioner was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. Adlerberg, what is your employment? A. I am president of Sunrise Dairies.

Q. And Sunrise Dairies is a retail dairy? A. We are principally a wholesaler selling to some dealers, but we also have some routes of our own.

Q. Have you been a regular customer of Crowley Milk Company, Inc.? A. I have.

Q. For how long? A. For close to 20 years.

Exhibit GC-2.
Bo Adlerberg, for Petitioner—Direct.

Q. About how much business do you do with them a month? A. At the present time we do only—well, none now, but we used to do the last few months we did business with them six hundred or eight hundred.

Q. Six or eight hundred a month? A. Yes, and during the shortage in the fall months much more when we buy extra milk from them.

Q. So is it fair to say in normal times you would do a minimum of six hundred dollars a month business with them which might go substantially up in some months? A. Yes.

Q. Are your employees represented by a union? (43) A. They are.

Q. Which Union? A. Local 680, A. F. of L.

Q. Who is the shop steward of that union? A. Mr. Del Vecchio.

Q. And you have a contract with the union? A. I do.

Q. Does that contract contain the provisions that, in substance, your employees need not handle goods which come from a company that is on strike or where Local 680 is on strike; is that right? A. I believe so.

Q. Did you receive a letter from the Union shortly after March 9th calling your attention to that provision? A. I did.

Q. What did you do about the letter? A. I threw it in the waste paper basket.

Q. Did you continue to order from Crowley Milk Company? A. Yes, I did.

Q. Did that letter request you to stop handling Crowley milk products by April 1st? A. Yes, it asked us to make other arrangements for supplies by April 1st.

Q. Do you recall any incidents that occurred within your personal knowledge on April 1st, with respect to deliveries (44) by Crowley Milk at your plant? A. Yes, I do.

Exhibit GC-2.
Bo Adlerberg, for Petitioner—Direct.

Q. Could you tell the Court what you know, what you personally saw and heard and did? A. April 1st, was that a Saturday or a Friday?

Q. A Friday. A. Well, I recall I had gone out to lunch and it was the regular time for delivery of the Crowley products. I mean, the truck pulled up and they couldn't accept the product.

Mr. Parsonnet: I object on the ground that this is not within his knowledge.

The Court: Did you see what happened when the truck drove up?

The Witness: Yes— not until I came back.

The Court: You tell us what you saw and heard.

The Witness: I received a telephone call from my office.

Mr. Parsonnet: I object to what was said.

The Court: As a result of the telephone call what did you do?

The Witness: I asked them not to——

Mr. Parsonnet: I object to anything he said, sir.

The Court: Mr. Adlerberg, you see don't tell us what third parties told you happened because they can speak for themselves.

(45) The Witness: All right.

The Court: You tell us what you know happened.

The Witness: I went back to my plant and the Crowley truck was in front and I asked how much do you have to deliver. "Only four tins of cottage cheese."

"Well, that's easy. Put it on the conveyor and I'll go inside and take them off the conveyor."

Q. You said that? A. I did it.

Q. You took them off the conveyor? A. I took them off the conveyor.

Exhibit GC-2.
Bo Adlerberg, for Petitioner—Direct.

Q. You signed for the cottage cheese? A. I signed for the cottage cheese.

Q. And the cottage cheese was then stored away in the cooler in the normal course? A. Yes.

Q. Is that correct? A. Yes.

Q. Now, do you recall a telephone conversation which you had within the next couple of days with respect to that cottage cheese? A. Yes, I do.

Q. With whom was that telephone conversation? A. Joseph Grenci.

The Court: How do you spell that?

(46) The Witness: G-r-e-n-c-i.

Q. Who is Joseph Grenci? A. He is my plant manager.

Q. What was the subject of that conversation?

Mr. Parsonnet: I object.

The Court: The mere subject matter won't do us any good.

Mr. Henderson: Your Honor, I submit that Mr. Adlerberg can testify to something he directly told Mr. Grenci in that conversation.

The Court: You mean in the form of an order?

Mr. Henderson: Yes, sir.

The Court: Well, if the order was transmitted to the defendants I suppose that is possible.

Mr. Parsonnet: It seems to me if the order was transmitted it ought to be testified to by the person who transmitted the order.

The Court: First, then perhaps corroborated by him as coming from the employer.

Mr. Parsonnet: Mr. Grenci is in court.

The Court: Shouldn't we have Mr. Grenci first?

(Witness excused temporarily.)

Exhibit GC-2.
Joseph J. Grenci, for Petitioner—Direct.

JOSEPH J. GRENCI, being called by the petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

(47) Q. What is your position? A. In the eyes of the company I am plant manager.

Q. Are you a member of Local 680? A. Yes, I am.

Q. Turn your attention to Saturday, April 2nd. Did you have a phone conversation on that day with Mr. Adlerberg? A. I think I did.

Q. Did he give you any instructions?

Mr. Parsonnet: I object. There is no foundation laid that those instructions were communicated to any representative of Local 680.

The Court: Well, of course I don't know what the instructions were about, but if the instructions are material here we have an order transmitted to some member of the Union by a man who got the orders from his employer.

Mr. Parsonnet: This is a plant foreman who is a management representative. In that respect he got some sort of order.

The Court: You say he represents the owner, not the employer?

Mr. Parsonnet: That is right, he is the plant foreman.

Mr. Henderson: That is correct. He just testified that he may be described as plant foreman or he may be described as company manager, but in either case the duties are (48) the same. He is a supervisory employee. We don't question that.

The Court: Well, are you coming to the point of what he did in so far as the Union is concerned?

Mr. Henderson: No, sir. I am trying to show that he received instructions and transmitted them.

The Court: To whom?

Mr. Henderson: To an employee of the plant.

The Court: Well, I suppose that goes to this point of unloading some of these Crowley goods contrary or in accordance with the Crowley contract and contrary to the Union contract, is that it?

Mr. Henderson: Yes, that is what it deals with.

The Court: I suppose we have got to go right to it.

Mr. Parsonnet: May I respectfully suggest that my objection be held until the termination of this line of testimony and then your Honor rule?

The Court: If he doesn't make that connection of course we will strike it all out.

Q. Did you receive any instructions from Mr. Adlerberg specifically with respect to the packaging of certain cheese? A. Yes, I did.

Q. Which cheese was that? A. The cheese that Mr. Adlerberg had received on Friday afternoon.

(49) Q. And what were Mr. Adlerberg's instructions to you? A. "Tell the men to pack it."

Q. Tell the men to pack it? And did you then pass those instructions along to the men? A. I went down to the by-product man, John Quinn, and I said, "John, I have instructions from Mr. Adlerberg for you to package the cheese."

Q. Did he package it? A. No, he didn't because he said he would have to receive further instructions.

Q. From whom? A. From the shop steward.

Q. What happened then? A. Nothing was done.

Q. Nothing was done? A. Until I believe the following day when I personally contacted Mr. Del Vecchio.

Q. Mr. Del Vecchio is the shop steward? A. The shop steward in our plant. And I said, "Del, I have this cheese. Mr. Adlerberg received it. He told me to have it packed." "I can't do anything with it. I am a member of the Union." And I said, "I have cut out my shipments from Crowley, so what should I do with the cheese?" And Del Vecchio told me, "Well, since you have cooperated that far," not to order any more Crowley products. "Go ahead (50) and package this and I will take personal responsibility as far as packaging it is concerned."

Q. So the cheese was then packaged? A. The cheese was then packaged.

Q. But Mr. Quinn——

The Court: The cheese was then packaged or unpackaged?

Mr. Henderson: It was then packaged.

The Witness: Packaged.

Q. But Mr. Quinn had previously refused to package it? A. You might call it a refusal, yes.

The Court: Who is Quinn? What did he have to do with it?

The Witness: He is our by-products man who packages all packages we receive from Crowley Milk Company.

Q. Did Mr. Quinn at any time give you a reason for refusing to handle the Crowley goods? A. The reason I said. "Well," he says, "you know my position." I said, "John, you know my position." And that was the end of it.

Q. Did you have any other conversation with John Quinn at any time with respect to handling Crowley products? A. It was through him that I had received indica-

tions that there may be a labor dispute between Local 680 and the Crowley Milk Company.

(51) The Court: Do I understand you to say that Quinn told you he wouldn't package?

The Witness: Well, he didn't actually tell me he wouldn't package. He said, "Joe, you know my position." I said, "John, you know my position." And that was the end of that.

Q. You did make a reference to having to see Mr. Del Vecchio? A. Yes, he had to receive further instructions from him as to what to do.

Q. I think that you might explain just what Mr. Quinn had to do to the cheese. A. Well, Mr. Quinn has to take the cheese from our cold storage area, bring it into the by-products packaging room, put it in the packaging machine and fill 12-ounce containers of cottage cheese and put the lids on it.

Q. Is this correct, that the cheese you previously received from Crowley wouldn't be of any use until it had been packaged in this way? A. That is right.

Q. Mr. Grenci, did John Quinn ever tell you anything about receiving instructions from Mr. Del Vecchio about handling Crowley products? A. Well, I believe I indicated that he had received some instructions. I gather that——

(52) Mr. Parsonnet: I object to any such statement. I think if such instructions were given Mr. Quinn should be subpoenaed to testify. This is pure hearsay.

The Court: Isn't that so? I mean, we don't have Quinn here as the Union representative, do we?

Mr. Henderson: As far as I know Mr. Quinn is not here, sir.

No further questions.

Exhibit GC-2.
Joseph J. Grenci, for Petitioner—Cross.
Bo Adlerberg, for Petitioner, Recalled—Direct.

Cross examination by Mr. Parsonnet:

Q. Mr. Grenci, did you ever hear any Union representative give any instructions to any employee not to handle Crowley products? A. No, I didn't.

Q. And when you spoke to Mr. Del Vecchio after speaking to Mr. Quinn, Mr. Del Vecchio immediately instructed Quinn to proceed with the packaging of the cheese? A. That's right.

Mr. Parsonnet: No further questions.

Mr. Henderson: I would like to recall Mr. Adlerberg.

Bo Adlerberg, resumed the stand.

Direct examination (continued) by Mr. Henderson:

Q. Will you answer the last question? (Question repeated by the Reporter.) "What was the subject of that conversation?" A. A telephone conversation between Mr. Grenci and myself.

(53) Q. Did you give Mr. Grenci any instructions during that telephone conversation? A. Yes, I did.

Q. What were the instructions about? A. I said, "Please tell the boys that I told them to pack the cheese."

Q. And to your knowledge was the cheese packaged then? A. The cheese was packaged.

Q. Now turning your attention to Monday, April 4th, did you have a phone conversation that day with Mr. Keber? A. Yes, I did.

Q. Did you call him or did he call you? A. I called him.

Exhibit GC-2.
Bo Adlerberg, for Petitioner, Recalled—Direct.

Q. What did you say to Mr. Keber? A. I said, "Is it really true that you have instructed the men in my plant not to handle the product from Crowley Milk Company?" And he says, "Yes, they are not supposed to touch the products of Crowley Milk Company."

Q. Was anything further said in that conversation? A. Yes, we had quite a long discussion.

Q. Did you indicate whether or not you wanted to continue to handle Crowley products? A. Yes. I told him I wanted to continue to handle the products. We have been a customer of theirs for many years. They had helped us out when we were short of milk and feed (54) products and I didn't want to take it upon myself to discontinue buying from them. After all I appreciate their services in the past, and we got along nicely together and I tried to explain that. But then Mr. Keber also told they had long labor disputes with them and all about that which he can testify to.

Q. I see. Well, how was it left? A. Well, it was left that we definitely couldn't handle the Crowley product. The men were so instructed not to touch them.

Q. Well, did you then get in touch with the Crowley Milk Company? A. Yes, I did.

Q. What did you tell them? A. I told them that we had tried to receive the milk or cheese for several days and that my men wouldn't handle the product and that——

Mr. Parsonnet: I object to all this as not being binding upon the Union, what he told the company.

Mr. Henderson: Your Honor, if I may say so I agree with Mr. Parsonnet. This testimony is not binding on the Union, but I think it is relevant to show the reason that the company discontinued business with Crowley Milk Company. It shows what they felt the situation was.

Exhibit GC-2.
Bo Adlerberg, for Petitioner, Recalled—Cross.

The Court: Why not ask him that directly. (55) Why did you stop doing business with Crowley?

Mr. Henderson: I was about to come to that.

The Court: Let's arrive.

Q. Why did you discontinue doing business with Crowley? A. Because my men wouldn't handle the products.

Q. Did you have any dissatisfaction with the Crowley products? A. No.

Q. Would you like to resume doing business?

Mr. Parsonnet: I object to what he would like to do. I object on the ground that it is immaterial.

The Court: Well, we can pursue it the other way just as well with this other plan by going through more or less the rigamarole of why he stopped and nailing it down in that way, if you prefer.

Mr. Parsonnet: If your Honor feels it is a waste of time I will withdraw the objection.

The Court: I think it's six of one and a half a dozen of the other.

Mr. Parsonnet: I will withdraw the objection.

A. Yes, I would.

The Court: And you were talking not about your desire now but your desire then?

The Witness: My desire then surely.

Mr. Henderson: No further questions.

(56) *Cross examination by Mr. Parsonnet:*

Q. Mr. Adlerberg, you have a contract with the Union, don't you? A. I do.

Q. You received a letter from them, P-1, on or about March 10th? A. Yes, I did.

Q. You threw it in the waste basket? A. Yes.

Exhibit GC-2.
Bo Adlerberg, for Petitioner, Recalled—Re-direct.

Q. Is that the regard that you have for contracts with the Union? A. No, not necessarily, but I thought since the situation would be straightened out long before the—what is—March 31st——

Q. So that since you thought— A. And it was a mimeographed letter. It was not addressed specifically to me.

Q. It was signed by Mr. Keber? A. I guess so.

Q. You knew you had a contract and you knew that the provision quoted in the letter was in the contract, did you not? A. Yes.

Q. You weren't interested in violating a contract with the Union, were you? (57) A. No.

Q. Other than the instructions that you gave to Mr. Grenci on April 2nd that the men should package the products, did you give any other instructions to the employees that they should handle Crowley products? A. All instructions go through Mr. Grenci.

Q. Were any such instructions given to your knowledge that they should handle Crowley products after April 1st? A. Not that I know of.

Mr. Parsonnet: That is all.

Mr. Henderson: For the convenience of the Court I ask that Mr. Parsonnet stipulate that this is the same as Petitioner's Exhibit 1. I want to show it to the witness.

Mr. Parsonnet: Yes.

Re-direct examination by Mr. Henderson:

Q. I show you now this letter, Mr. Adlerberg, which is a photostatic copy of P-1. Is there anything in that contract, in that contractual provision quoted in that letter which says you cannot do business with Crowley Milk Company? A. I am not that much of a lawyer. I would like to buy products from them if I didn't want to be put in the

positio.. in the first place to be the judge of the contract.

Q. Does this letter say "We shall expect that by on or before April 1, 1955, you will discontinue receipt of any materials from Crowley Milk Company, and will discontinue (58) making deliveries or picking up to or from this company as long as their labor dispute continues? A. Yes.

Q. Are you aware of a provision in the contract which gives the Union the right to make that request of you? A. No.

The Court: What request?

Mr. Henderson: The request that they discontinue.

The Court: Discontinue the receipt of material.

Mr. Henderson: Yes, that's right.

Re-cross examination by Mr. Parsonnet:

Q. You are familiar with the contract, are you not? A. No, I never received one.

Q. Exhibit D-1 you never received? A. I never received it. No. We asked for it many times and I never had the pleasure of seeing it.

Q. That is the fault of the employer's committee, is it not? A. Maybe not, I don't know.

Q. The union didn't owe you a copy? A. No.

Q. You admitted you have seen copies? A. Yes.

Q. You have seen the previous copy? A. Yes, two or three years ago is the last time I saw a copy (59) of the contract.

Q. And in that contract is it not the fact that the same clause appears as appears in here known as 18-B which reads as follows:

The Union shall not cause stoppages or enforce any sympathetic strike of its members, and the employer shall

not aid any other companies in any fight that may be waged against the Union. A. I don't think that paragraph was in when I last saw the contract.

Q. If I told you from my personal knowledge that it had been in there from twelve years back— A. Then I'd believe you.

Mr. Parsonnet: That is all.

Mr. Henderson: No further questions.

Your Honor, I would request that Mr. Adlerberg and Mr. Blum be both excused from further testimony. Mr. Parsonnet will consent. Both have important engagements.

The Court: Very well.

RUDOLPH LANG, called by the petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. Lang, you are president of the North Jersey Dairy Land, is that right? A. That is correct.

(60) Q. What is the business of that company? A. We bottle and process—process and bottle fluid milk and make ice cream.

Q. I see. Are you a customer of Crowley or were you up to April 1st? A. We were.

Q. For how long were you a customer of Crowley? A. Well, approximately 12 years.

Q. About how much business do you do with them a month? A. I would say roughly about $25,000 a year.

Q. What kind of products do you buy from them? A. Well, we bought fluid cream, skimmed powder, cottage cheese.

Exhibit GC-2.
Rudolph Lang, for Petitioner—Direct.

Q. Ice cream mix? A. Ice cream mix.

Q. Now your employees are represented by Local 680, is that correct? A. That is correct.

Q. You have a contract with them? A. We do.

Q. Who is your steward? A. Mr. Frank Ellias.

Q. Is he your shop steward? A. Yes.

Q. What is his job? A. He takes care of the ice-box. the loading of milk as it (61) comes off. He packs it in the cold room and gets out the orders to the truckmen.

Q. Now you have heard reference in these proceedings already to the letter of the Union of March 9th to various customers? A. That's right.

Q. Did you receive such a letter? A. I did, sir.

Q. And that letter made a deadline of April 1st for cutting off business with Crowley, is that right? A. That is right.

Q. And now turning your attention to April 1, 1955, that was a Friday, do you recall an instance in connection with a delivery by Crowley? A. Yes. I wasn't there actually when the delivery was made so I couldn't vouch for that. My experience with the incident was after the delivery was made.

Q. Could you tell us what you personally saw and heard and said and did? A. I got in the plant about a quarter of 9 and as I walked up the street I met the shop steward, Frank Ellias, and he said he was going into the ice cream room to inform the ice cream manufacturer or maker of ice cream that he was not to handle any of Crowley's ice cream mix.

Q. Did he say why? (62) A. No, I guess he assumed that I knew why.

Q. Who is the ice cream man? A. George Machuella.

Q. Did Frank Ellias say anything to you about having—about any conversation he had just before that? A. It

seemed to me he was coming from the telephone booth across the street, and he said to me that he had just gotten instructions to tell the ice cream man not to use the product.

Q. Did he say who he had called? A. He said he had just called the Union.

Q. And he had gotten instructions? A. That's right.

Q. Do you recall the words he used as closely as possible? A. Just that he had gotten instructions from the Union to tell the ice cream man not to use Crowley's mix.

Q. He didn't say who down at the Union? A. No.

Q. He just said "from the Union"? A. That's right.

Mr. Parsonnet: You have testified "from the Union." You have added those words I am afraid.

Mr. Henderson: I wanted to clarify it. My recollection was that he had use the words "from the Union." Now if I am incorrect straighten me out.

The Witness: From the Union, that is correct.

(63) Q. What did you do then? A. I just went up into the office and let matters take their course.

Q. Well, what was the next conversation you had in connection with this matter and with whom? A. I was instructed by one of the other men in our firm that the ice cream man was not going to use Crowley's mix.

Q. Who was this other man? A. Mr. McCormack.

Q. Who is Mr. McCormack? A. He is the vice-president of the North Jersey Dairy Land.

The Court: He reported to you?

The Witness: That is right.

Q. What did you say to Mr. McCormack then? A. What did I say to Mr. McCormack?

Q. Yes. A. I said if the ice cream man refuses to use Crowley's mix we had no other mix on the premises. The

only thing we could do if he refused to work was to send him home. We had no other work for him.

Q. What was the next thing that happened in this matter? A. The next thing that happened he came back to me and the shop steward, Mr. Ellias, came to me and said that if I sent the ice cream man home he would have to take him down to Local 680. That was his instructions.

(64) Q. Now when you say that was his instructions are you reporting what he told you or your impression? A. No, what he told me. Those were his specific instructions if I were to send the ice cream man home for refusing to use Crowley's products, that he was instructed to bring him to the local. He wasn't to go alone.

Q. Mr. Ellias was to take? A. To take him, that is right.

Q. So what did you do then? A. We talked the matter over for approximately three-quarters of an hour.

Q. You and Mr. Ellias? A. Mr. Ellias and Mr. McCormack came in intermittently and I said to Mr. Ellias, I said, "We cannot afford to send you. We might as well shut the plant down because you have no dispute here, it's the ice cream man. If I send you outside the box, we will have to shut down the whole plant." "Well," he says, "that is my instructions if he goes I go."

Q. So what did you do? A. Well, I figured, and he had also said this, that I would have to pay him. So I thought this, if I have to pay the man for not working, I would buy some mix from the local plant and I bought it from International which is only a few blocks away from us and I bought the mix from them for the day and I let them go to work because I couldn't afford to (65) lose him out of the ice box and practically shut the plant down for a day.

Q. Did you get in touch with Crowley Milk Company then? A. Yes, I did.

Q. And did you explain the situation to them? A. I did.

Q. Did you discontinue ordering from Crowley? A. A. Yes. I don't think we got other shipments—I don't know—no, I don't think we did. We discontinued ordering. I told them the men refused to handle it and I explained what happened that day, and I said that under the circumstances I didn't think that they should send any more mix, because I wouldn't be able to use it.

Q. Are you dissatisfied with the Crowley products at all? A. I never was.

Q. Do you intend to resume doing business with Crowley after this thing blows over? A. I do.

Q. Did you write a letter to the Union? A. Yes, I did.

The Court: Counsel, must you look up some data in this regard because this other ring in my circus wants my attention.

Mr. Henderson: I ask that this be marked for identification, Petitioner's No. 3.

(66) The Court: Meanwhile get counsel in the jury case.

The Clerk: Photostatic copy from Mr. Lang to Local Union 680, dated April, 1955, will be marked Exhibit P-3 for identification.

Mr. Parsonnet: May it be stipulated that the exact date was April 7th?

Mr. Henderson: April 7th, very good.

Q. I hand you what has been marked for identification Petitioner's Exhibit 3. It has been stipulated by counsel for the Union that that was received. Now is that a letter that you wrote? A. It is.

Mr. Henderson: I offer it in evidence.

Mr. Parsonnet: No objection.

Exhibit GC-2.
Rudolph Lang, for Petitioner—Cross.

The Court: Mark it. Is this an apt time to interrupt for just a minute?

Mr. Henderson: Very well. I would like to conclude with this witness today, if we may.

The Court: If it's just a couple of more questions ask those questions, but I have got to permit this jury to proceed.

Mr. Henderson: I think I can stop right now with the introduction of that in the record. No further questions.

The Court: You sit right there on the stand. Call the jury in and ask them to bring with them the two indictments.

(67) The Clerk: P-3 formerly marked for identification now marked in evidence.

(Jury in another case receives instructions.)

The Court: Cross examine—or had I best read that letter?

Cross examination by Mr. Parsonnet:

Q. Mr. Lang, you received no response to that letter, did you? A. No.

Q. As a matter of fact your attorney had called Mr. Keber earlier, had he not? A. To my knowledge.

Q. And your attorney had been informed that we did have a labor dispute with Crowley, was he not? A. I can only tell you what I was told.

Q. What did your attorney tell you in that respect? Did he tell you that Mr. Keber told him that the Union was in a dispute with Crowley? A. That's right. And that was the reason I sent the letter.

The Court: You mean you were told that before you sent the letter?

The Witness: That's right.

Exhibit GC-2.
Rudolph Lang, for Petitioner—Cross.

Q. The letter was merely a repetition of your statement that you couldn't find any dispute? A. The letter was sent by me. The conversation was with my (68) attorney. I knew nothing of the conversation only hearsay.

Q. Your attorney did report it to you? A. Just in conversation.

Q. And as a matter of fact your attorney wrote the letter, didn't he? A. No, we wrote it.

Q. Who is E. O. G.? A. Elmer O. Goodwin.

Q. Who is he? A. He is our attorney.

Q. May I call your Honor's attention to the fact that on the original—I don't know whether the copy has it on—on the upper left corner of the letter is the word "Draft" and thereunder E. O. G. The first word on top is Draft. The second line has E. O. G.: and under that 4/4/55.

Q. Your attorney did write the letter? A. We wrote the letter.

The Court: That is not the stamp that appears here, if I can understand it.

Mr. Parsonnet: May I look at that for a moment?

Q. Mr. Lang, is this your signature? A. Yes.

Q. This is the letter you wrote? A. Yes.

Q. I ask you whether on the original of the letter (69) appear the words that I have read off to you. A. Yes.

Q. And E. O. G. is your attorney? A. That's right.

Q. Do you know Mr. Iorio? A. Yes.

Q. Did you see him in your plant on April 2, 1955? A. What day was April 2nd?

Q. Saturday. A. I don't recall.

Q. This occurrence to which you have testified about the failure to process the Crowley product occurred on April 1st, did it not? A. That is correct.

Exhibit GC-2.
Rudolph Lang, for Petitioner—Cross.

Q. Who is Mr. Iorio? A. He is an official of the Union.

Q. He's a business agent, is he not? A. That's right.

Q. And you don't recall whether you saw him on Saturday, April 2nd? A. Not to my knowledge.

Q. But you do recall, don't you, that on Saturday, April 2nd, your employees processed the Crowley products? A. Yes.

The Court: I thought you said you had to go out to (70) International to get products.

The Witness: That is correct.

Mr. Parsonnet: That is correct. The fact is that on Friday, April 1st, they processed some products of International, but on Saturday 2nd the products that had been received from Crowley were processed.

The Court: Oh.

Q. And thereafter they were delivered by your employees? A. Delivered.

Q. Yes? A. We don't deliver anything.

Q. Your employees assisted in handling the product to dealers who came for the product? A. No, sir, they don't handle it.

Q. Do the dealers go right into the ice box? A. We are talking about ice cream now?

Q. Yes. And ice cream was in the ice box? A. That's right.

Q. And do the dealers go into the ice box to get ice cream? A. Dealers, no.

Q. It is right out there for them? A. That is correct.

Q. Who brought it out? A. Well, there is ice cream in storage. We never know which (71) one was processed from one mix or another. We couldn't pin-point it.

Q. But who does? A. The ice cream man.

Q. Who is the ice cream man? A. George Machuella.

Q. He was the man who would have handled that product? A. There was a man in the ice box and he could have handled it.

Q. Permit me to finish my question. Perhaps you can think faster than I can. A. I am sorry.

Q. Is he the one who delivers the product to anyone who came to get it? A. What do you mean by deliver?

Q. Give it to him. A. Yes.

Q. He is a member of the Union? A. That's right.

The Court: And your employee?

The Witness: Yes, sir.

Q. Now, Mr. Lang, at any time following this incident of April 1, 1955, did you give any orders to any employee directing them to handle Crowley products? A. We didn't have any to handle.

Q. I didn't ask that question. (72) A. No, sir.

Mr. Parsonnet: That is all.

Re-direct examination by Mr. Henderson:

Q. Mr. Lang, you testified that you had a conversation with Mr. McCormack about Mr. Machuella? A. Yes, sir.

Q. What was it that Mr. McCormack told you about Mr. Machuella?

The Court: Who is Mr. McCormack and who is Mr. Machuella?

Mr. Henderson: Mr. McCormack is the vice-president of the company, your Honor, and Mr. Machuella is the man who processes ice cream mix, if I may explain that Mr. Parsonnet has been asking questions to show that the ice cream mix was processed and I

am now trying to ask questions to show there was a refusal to process.

The Court: But if one of those fellows told this man such refusal, it is those fellows who should testify.

Mr. Henderson: Very well, that will be done, your Honor.

Q. On Friday, April 1st——

Mr. Parsonnet: May I, Mr. Henderson, offer a suggestion, that may perhaps avoid testimony. I am informed, sir, that on Friday, April 1st, Mr. Ellias did tell members of the Union not to handle the Crowley product. I will admit that.

(73) Mr. Henderson: Very well.

Mr. Parsonnet: It will be our evidence that the following day the orders were reversed by reason of instructions from the Union.

Mr. Henderson: Very well. I want to avoid wasting time and that is definitely the fact.

Q. Well, on Friday, April 1st, did you call Crowley? A. Yes.

Q. Did you discontinue—did you inform Crowley you were discontinuing ordering from them? A. I did.

Q. By the way, did you inform the Union of that? A. No.

Q. And the letter you wrote to the Union, Petitioner's Exhibit 3, which we discussed, was written after Friday, April 1st? A. That's correct.

Q. It was sent out on April 7th, is that correct? A. Approximately.

Q. And you never got a letter from the Union in reply to that? A. No, sir.

Exhibit GC-2.
John McCormack, for Petitioner—Direct.

Mr. Henderson: No further questions.

Mr. Parsonnet: No questions.

The Court: Now we are at 4 o'clock, gentlemen, and (74) I don't suppose you are within reaching distance of the end, are you?

Mr. Henderson: No, sir, I would like to put on, since we have been talking about the North Jersey situation, I would like to put on Mr. McCormack rather briefly.

Mr. Parsonnet: I have no objection.

The Court: You have a suggestion.

Mr. Parsonnet: I have a suggestion, a request to make to Mr. Henderson. If he will consent I do not like to go on the stand. I would like to ask if Mr. Henderson would consent to a stipulation as to what I would testify concerning this letter if I were——

The Court: We are going on tomorrow at noon.

Mr. Henderson: At noon.

The Court: You gentlemen can confer about that stipulation meanwhile.

Mr. Henderson: Very well.

The Court: Do you think Mr. McCormack will be brief?

Mr. Henderson: Yes, sir, five or possibly ten minutes.

JOHN MCCORMACK, called by the petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. McCormack, you are vice-president of North Jersey Dairy Land, is that correct?

Exhibit GC-2.
John McCormack, for Petitioner—Direct.

(75) Q. You saw the letter from the Union dated March 9th requesting you not to deal with Crowley Milk? A. I seen it but I didn't read it.

Q. Between April 9th and between March 9th and April 1st, did you have a conversation with Mr. Ellias, the shop steward? A. Yes.

Q. What was that conversation? A. It was regarding this letter. He asked me if we received a letter and I said we did.

The Court: Now do you need this conversation in view of the stipulation or the admission by Mr. Parsonnet?

Mr. Henderson: I think you are probably right, your Honor. I will recede from this line of questioning.

Mr. Parsonnet: If I may interrupt, sir, it seems to me that the admission that I made with respect to the mistake we made on April 1st, does not relate to the letter at all and I should like to hear what Mr. McCormack has to say concerning that letter and the conversation with Mr. Ellias.

The Court: I may have wrongly jumped to a conclusion. I thought he was going to talk about what instructions Mr. Ellias gave on April 1st.

Mr. Henderson: No, this was Mr. Ellias' view of his instructions before April 1st.

The Court: Go ahead.

Q. Will you resume with the conversation then? (76) A. Yes. Mr. Ellias asked me if we received a letter and I said we did, and he said, well, it goes into effect on April 1st and he suggested that we buy our products somewhere else to avoid any embarrassment on his part or embarrassment of the men in the plant.

Exhibit GC-2.
John McCormack, for Petitioner—Direct.

Q. Are you quoting his exact words? A. Not his exact words. I can't remember his exact words, but those——

Q. Are those as close to exact words as you can remember? A. That is right, yes.

Q. Now turning to the incident of April 1st, if I may lead a little, did Mr. Machuelle come to you and say that the steward had ordered him not to handle Crowley mix?

Mr. Parsonnet: I object. Mr. Machuella, who is an employee of the company and a member of the Union is not an agent of the Union. Any conversation between Mr. Machuella and Mr. McCormack is therefore not binding.

The Court: Not binding.

Mr. Parsonnet: Not binding on the Union and it seems to me if any such instructions were given it should be testified to by Mr. Machuella and not Mr. McCormack.

Mr. Henderson: I think that is quite correct, but in view of the prior admission of Mr. Parsonnet I was bringing that up not for the truth of the statement by Mr. Machuella but simply to set the stage for the next question.

(77) The Court: Ask your next question off the stage.

Q. After your conversation with Mr. Machuella did you report to Mr. Lang? A. Yes, I did.

Q. And did Mr. Lang give you instructions? A. Yes, he did.

Q. What were those instructions?

Mr. Parsonnet: I object. If any instructions were communicated to employees that can be testified to, of course.

Exhibit GC-2.
Discussion.

Mr. Henderson: This is the same question we had before. This is the matter of instructions being transmitted to Mr. McCormack and by him to Mr. Machuella. He was an employee.

Mr. Parsonnet: Yes, Mr. Machuella was the end of the line.

The Court: What did you tell Mr. Machuella to do?

Q. What did you tell Mr. Machuella after your conversation with Mr. Lang? A. If he didn't want to work with Crowley products that he might as well go home.

Q. Was that pursuant to instructions you had received from Mr. Lang? A. That was through the conversation of Mr. Lang and I.

Mr. Henderson: No further questions.

(78) Mr. Parsonnet: No questions.

The Court: Now we can recess until noon tomorrow.

Mr. Henderson: Yes, sir.

The Court: Court stands adjourned.

(Adjourned to Friday, June 10, 1955.)

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(79) Newark, N. J., Friday, June 10, 1955.

(Hearing resumed pursuant to adjournment.)

(Appearances as previously noted.)

The Court: This is a continuance of yesterday's hearing.

Mr. Parsonnet: I think the petitioner was putting witnesses on the stand.

Mr. Henderson: That is correct.

Exhibit GC-2.
Discussion.
Frank G. Thompson, for Petitioner—Direct.

Mr. Henderson: Mr. Clerk, may I have these two marked for identification.

The Clerk: Photostatic copy of letter dated March 31, 1955, Joseph Thompson & Sons to Milk drivers and dairy employees, will be marked Exhibit P-4 for identification. And copy of letter dated April 1, 1955 from Richard Keber to Thompson Dairy will be marked P-5 for identification.

(Marked Exhibits P-4 and P-5 for identification.)

Mr. Henderson: Now, Mr. Parsonnet, I believe it is correct that you will stipulate that those are accurate copies of a letter sent from Thompson to your client and the reply from the Union to Thompson; is that correct?

Mr. Parsonnet: I will, yes.

The Court: Does the witness need it, because apparently I do.

Mr. Henderson: I don't think so. I was just going (80) to get the witness to identify them, but they have been sufficiently identified.

The Court: They are stipulated.

I better read them before we proceed.

Mr. Henderson: I think probably it would be a good idea, sir.

(Court reads letters.)

FRANK G. THOMPSON, a witness for petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. Thompson, what is your business? A. Processing dairy products and retail and wholesale delivery.

Exhibit GC-2.
Frank G. Thompson, for Petitioner—Direct.

Q. And what company is that? A. Joseph Thompson & Sons of which I am one of the partners.

Q. Are you a customer of Crowley? A. Not now. We have been.

Q. Prior to April 1st, were you a customer of Crowley? A. Yes, sir.

Q. About how much business a year would you do? A. I would say approximately $500 per month.

Q. $500 per month? A. Yes.

Q. Are your employees represented by Local 680? A. Yes.

Q. What is your steward's name? (81) A. Isaac Vebang.

Q. How do you spell that last name? A. V-e-b-a-n-g.

Q. Were you present in court yesterday? You heard reference to the letter of March 9th from the Union? A. Yes, I did.

Q. Did you receive such a letter? A. Yes, I did.

Q. When did you first see it? A. Well, as I understand it this letter was received by our office on the 11th of March. I had gone away on a vacation two days previous to that and I didn't know about the letter until I returned from vacation which I believe was on a Wednesday, the 30th of March, and among other papers piled on my desk was this letter from the Union, and that was the first that I had seen the letter to our company.

Q. Did you write a letter to the Union about it? A. Yes, I did. The very next day.

Q. Dated March 31st? A. I believe that is on or about that date.

Q. And you received a reply from the Union? A. That is correct.

Q. The next day? A. Well, not the next day, I believe the following day, the day after that.

Exhibit GC-2.
Frank G. Thompson, for Petitioner—Direct.

(82) Mr. Henderson: May it please the Court, since it has been stipulated I don't think the witness need identify those particular letters, but they are Petitioner's Exhibits 4 and 5 that have just been introduced.

Q. Now after April 1st did you continue to order Crowley products? A. I still had Crowley products on order, yes, sir.

Q. Did you have any discussion with any representative of the Union about that? A. After I had received this letter from the Union I was considering what further action to take by the company.

The Court: You mean by that, after you returned from your vacation?

The Witness: That's right. And this is after I had written our letter to the Union. However, that day or the following day our shop steward, Isaac Vebang, approached me.

Q. Where did he approach you? A. In our plant in the laboratory. This was after I had received the reply from the Union.

Q. I see. Would this be during the first week in April? A. Yes, sir, that is right.

Q. What did Mr. Vebang say to you? A. Well, Mr. Vebang said, "Frank, I know you are still receiving Crowley products here and I was advised down below (83) that you will have to discontinue these products. Otherwise I will have to inform the men not to handle them." So I returned. I said to Isaac, I said, "We have been satisfied with Crowley products and used them over these period of years so I hate to give them up, but if that is the final order I will notify Crowley to that effect."

Exhibit GC-2.
Frank G. Thompson, for Petitioner—Cross.

And in fact, I said, "We have an order coming in. I will tell him to let that order come through and that will be the last order and we will make other arrangements," and that is what I did.

Q. Did Mr. Vebang explain what he meant by "down below"? A. He ment the Union, as I understand it.

Mr. Henderson: No further questions.

Cross examination by Mr. Parsonnet:

Q. You were informed by your bookkeeper, were you not, Mr. Thompson, that Mr. Vebang had spoken to him about the matter? A. I beg pardon?

Q. You were informed by your bookkeeper that Mr. Vebang had spoken to him about the matter in your absence? A. No, following my arrival from my vacation.

Q. He then informed you? A. As I say I found these papers on my desk.

Q. Just a moment, answer my question. Did your bookkeeper inform you that in your absence Mr. Vebang had spoken (84) to him about the matter? A. On the 30th of March is when the bookkeeper drew this letter to my attention.

The Court: It's not a question of the letter, Mr. Thompson. The question is whether he told you that the steward had spoken to him about the case.

The Witness: I don't recall other than that I knew this letter was on top of my papers saying that it was a matter that had to be taken care of.

Q. Were you not informed, Mr. Thompson, that a double order of Crowley products had been ordered in your absence with the consent of Mr. Vebang for the purpose of tiding the matter over until you got back? A. No, that is news to me.

Exhibit GC-2.
William P. Coyle, for Petitioner—Direct.

Q. Now you did actually receive an order of Crowley products after April 1st, did you not? A. That is correct, with the permission of the shop steward.

Q. He made no objection to it, did he? A. That's right, but he said that would have to be the final shipment. That is absolutely true.

Q. And did the men package it and ship it? A. That is correct.

Q. Did you ever give them any orders to handle any further Crowley products? A. Not after I talked to our shop steward, Isaac Vebang, (85) that is correct.

Q. Did you ever give them any order to handle the Crowley product at any time following April 1st? A. Not specific orders other than our daily—my daily orders as to the putting up of the products.

Mr. Parsonnet: That is all.

Mr. Henderson: No further questions.

WILLIAM P. COYLE, called by petitioners, was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. Coyle, where are you employed? A. Crowley Milk Company, Binghamton, New York.

Q. In what capacity? A. Salesman.

Q. Mr. Coyle, directing your attention to Friday, April 1st of this year, where were you on that day, and what were you doing? A. I was at our Paterson plant and directed by Crowley Milk Company to follow our pedal truck driven by Frank Berardi.

The Court: Follow up.

The Witness: Our milk pedal truck or delivery truck.

Exhibit GC-2.
William P. Coyle, for Petitioner—Direct.

Q. And did you follow Mr. Berardi's truck? A. I did.

Q. To customers of the Crowley Milk Company? A. That's right.

Q. Did you go to Sunrise Dairies? (86) A. Yes.

Q. About what time? A. Approximately—early in the morning.

Q. What happened when you came to Sunrise Dairies early in the morning? A. Our truck pulled into the yard to discharge an order placed by Sunrise Dairies for our products. The driver went, left his truck to go into the plant and came back and got in his truck and drove away.

Q. Did he make a delivery? A. He did not make delivery.

Q. Did you return to Sunrise Dairies later? A. We did.

Q. About what time was that? A. Approximately noon.

Q. Will you describe what happened on your return trip? A. Our driver went, got out of his truck and went into the plant and spent a few minutes coming outside of the plant over to the car and he told me that no one in the plant would receive the goods. They had refused.

Mr. Parsonnet: I object to that, and ask that it be stricken, what the driver told him is not binding upon us.

The Court: Is the driver here?

The Witness: The driver is here.

Mr. Henderson: The driver will testify to this.

(87) Q. You had a conversation with the driver. What did you do after your conversation with the driver? A. I inquired from the driver who had refused to receive the goods.

The Court: Don't give us that conversation. We want to know physically what happened. Did you deliver or did you not deliver?

A. We did not deliver—we did deliver, yes.

The Court: Did you unload?

The Witness: We did unload, yes, after a series of refusals.

The Court: Now, I suppose we can get your testimony as to what you actually saw and heard happened with third parties there.

Mr. Henderson: That is what I mean, your Honor.

Q. Did you then go into the plant? A. I did.

Q. I see. Did you have a conversation with anyone in the plant? A. I did.

Q. Who was that? A. Their foreman, Earl Roberts.

The Court: You mean Sunrise cooler man?

The Witness: The Sunrise cooler man.

Q. Did you ask him to receive the goods? (88) A. I did.

Q. What did he say? A. He said he would not receive the goods and I asked him on whose instructions.

Q. Just a minute.

Mr. Parsonnet: I object to any conversation between this witness and Mr. Roberts. Mr. Roberts may be a member of the Union, but he certainly is not authorized to speak for the Union.

The Court: He is authorized to explain his own actions, isn't he? This conversation is who told him. He is explaining his own acts. The man practicaily asked him why are you refusing.

Exhibit GC-2.
William P. Coyle, for Petitioner—Direct.

Q. What did Mr. Roberts say to you then? A. Mr. Roberts said he had been directed by the shop steward not to receive or handle Crowley products.

Q. Did you talk to anybody else? A. I inquired to speak to the shop steward and he was absent. I then inquired for the new owner of the business and was directed to Mr. Adlerberg and was directed to his office.

Q. Did you speak to Mr. Adlerberg? A. I did by telephone.

Q. What happened then? A. Mr. Adlerberg agreed to come over and receive the goods into the cooler or see that someone would take the goods that (89) had been ordered.

Q. Did Mr. Adlerberg receive the goods? A. Mr. Adlerberg did receive the goods.

Q. He did sign for them? A. He did sign for the merchandise.

The Court: Personally?

The Witness: He received them personally.

The Court: I mean, he received them personally.

The Witness: We had our goods unloaded on their platform and Mr. Adlerberg signed for the goods.

The Court: Was this the cheese matter that was talked about yesterday?

Mr. Henderson: Yes, sir, this is the same transaction that Mr. Adlerberg testified to.

The Court: I understood him to say he personally took care of the cheese.

Mr. Henderson: Yes, that is correct.

Q. That was April 1st on a Friday, is that right? A. That's right.

Q. Did you return to Sunrise on Monday, April 4th? A. We did.

Exhibit GC-2.
William P. Coyle, for Petitioner—Direct.

Q. What happened then? A. We had an order to deliver to Sunrise Dairies and our driver again came from the truck and said that the cooler man had refused to accept the goods. I again visited the cooler man.

(90) Q. Just a minute. Was this the same cooler man? A. No, it was not.

Q. Do you remember this cooler man's name? A. Mr. Vendt.

Mr. Parsonnet: What was that name?

Mr. Henderson: V-e-n-d-t or W-e-n-d-t.

Q. Did you ask the cooler man to receive the goods? A. I did.

Q. Did he refuse? A. He did refuse. And again I inquired on whose orders. And he said the shop steward, Mr. Del Vecchio.

Q. After that conversation did you talk to Mr. Adlerberg? A. I did, in Mr. Adlerberg's office.

Q. You heard Mr. Adlerberg testify yesterday as to the phone conversation with Mr. Keber? Were you with Mr. Adlerberg when he made that conversation? A. I was.

Q. Did you hear what Mr. Adlerberg said? Of course, you couldn't hear what Mr. Keber said. A. I did.

Q. Do you recall what Mr. Adlerberg said? A. Mr. Adlerberg said that his men had refused to accept or process Crowley merchandise and that their instructions had been received from Local 680, and he called to confirm that direction. Mr. Adlerberg after the conversation told me——

(91) Q. Let me interrupt you. Don't tell us what Mr. Adlerberg told you. Now then on April 4th the same day, Monday, did you go to the International Milk Company? A. I did.

Q. What happened there? A. Our truck pulled into their platform to discharge their order, and were stopped en route by Mr. Shuta.

Exhibit GC-2.
William P. Coyle, for Petitioner—Direct.

Q. Who is Mr. Shuta? A. Mr. Shuta is the shop steward for International Milk Company.

Q. What did Mr. Shuta do? A. As our truck was backing into the platform Mr. Shuta stepped to the cab and spoke to our driver.

Q. Did you hear what he said? A. I did not. I saw him motion to the driver and immediately I got out of my car and introduced myself to Mr. Shuta and asked him what the difficulty might be. He said we will not accept Crowley merchandise, and I inquired in whose orders and he said on Local 280.

Q. 280 or 680? A. 680's direction.

Q. Did he say how that direction had come, by letter or telephone or— A. No, I didn't inquire on that and I asked him then if the Crowley merchandise were delivered what was his direction (92) or what was his intention and he said——

Mr. Parsonnet: I object to what Mr. Shuta's contentions were.

Mr. Henderson: Your Honor, I think the witness could testify what he asked Mr. Shuta.

Mr. Parsonnet: He was about to testify what Mr. Shuta said.

Mr. Henderson: That is right. He is about to testify exactly what Mr. Shuta said.

The Court: Why is not that all right because the Union is under Mr. Shuta, he is in local charge, isn't he?

Mr. Parsonnet: I think to answer that fully I should read to your Honor from the contract indicating the nature of the steward's authority. It reads as follows:

This is from Exhibit D-1, Section 9 on page 8: "There shall be a steward or stewards but not more

then one for each craft at each delivery branch, pasteurizing branch and garage to see whether the members of the Union and the employers live up to the provisions of the agreement and rules of the Union not inconsistent with this agreement, and to report any infraction of such provisions and rules to the superintendent who shall promptly correct them. Such steward or stewards shall be selected by the Union and each shall be an employee of the place in which he is a steward and there shall be no discrimination against stewards for (93) union activities. The steward shall have no authority to alter, amend individual regulations or in any wise change any part of this agreement. The steward shall report to the business agent of the union any violation." His sole authority, sir, is to report violations.

The Court: No. You read there that he was to see to it that the members of the Union should live up to the agreement.

Mr. Parsonnet: See to it, and then it proceeds to describe how by reporting infractions to the superintendent or to the Union.

The Court: May I look at it?

Mr. Parsonnet: Certainly, sir.

Mr. Henderson: In looking at that may I ask that you keep in mind also Petitioner's Exhibit 2, the letter from Mr. Keber to the shop stewards specifically telling them to see to it that members of his union abide by this agreement.

The Court: May I see that, too?

Mr. Henderson: Referring to Section 18 (d). I think you should have one as well.

The Court: This pamphlet "Metropolitan Area agreement" is I presume incorporated by reference in the contracts with the various employers?

Exhibit GC-2.
William P. Coyle, for Petitioner—Direct.

Mr. Parsonnet: It is the contract.

The Court: It is the contract.

(94) Mr. Parsonnet: We shall at the proper opportunity explain exactly what was meant by Exhibit P-2.

The Court: I suppose it is possible for a person to proceed extra the contract.

Mr. Parsonnet: That would not be within the authority delegated to him by the Union.

The Court: It would not be in accordance with the contract but it might nevertheless be done because sometimes people don't strictly abide by contract.

Mr. Parsonnet: There, sir, I would fully agree as will be pointed out to your Honor in our case, there was an admitted violation of our contract with respect to the North Jersey Dairy Land on April 1st. I stated that to your Honor yesterday, but it was corrected immediately as soon as the Union heard about it. Now that kind of violation, sir, should not, I submit, be held against the Union if it is done without authority.

The Court: But I suppose it is subject to proof and it stands until then if it is shown to have been made a nullity.

Mr. Parsonnet: If your Honor will take the evidence on that basis I shall raise no objection.

The Court: I think it's evidential. It may be ultimately nullified, which is another matter.

So the question is what happened, particularly in (95) the light of P-1 and P-2, P-2 constituting a notification to the shop stewards generally including Shuta.

Exhibit GC-2.
William P. Coyle, for Petitioner—Direct.

Shuta said to them they wouldn't accept Crowley's goods and that was on the order of Local 680. That is as far as my notes go.

Mr. Henderson: Let me rephrase the question. Did Mr. Shuta say anything to you of what would happen if Crowley Milk was actually delivered.

A. Mr. Shuta—I did ask him that question and his reply was that they would boycott.

The Court: Those are his words?
The Witness: Those are his words.

Q. Mr. Coyle, you heard Mr. Blum testify yesterday as to his phone conversation with Mr. Keber on Monday, April 4th. Were you present in Mr. Blum's office at the time of this conversation? A. I was present.

Q. Did you hear Mr. Blum speaking to Mr. Keber? A. I did.

Q. What did you hear Mr. Blum say to Mr. Keber? A. Mr. Blum said to Mr. Keber that he had an order being delivered by Crowley Milk Company, that Shuta, the steward, refused to accept it, and his directions—Shuta's directions—were received from Local 680, and he was inquiring from Mr. Keber if this were true. He told Mr. Keber about (96) a contract to buy dairy products from the Crowley Milk Company.

Q. Mr. Coyle, were you also present in Mr. Blum's office during a conversation that he had that day with Mr. Shuta? A. I was.

Q. What was said at that conversation that you heard? A. Mr. Blum inquired from Mr. Shuta whether he would accept the Crowley merchandise and he said that he had been directed not to handle our products, Crowley products.

Q. Who said he had been directed not to handle the products? A. Mr. Shuta. On a question as to who made

the directions, Mr. Shuta said it was from Local 680, direct orders.

Q. Did he name any particular person in Local 680? A. I——

The Court: You are not sure?

The Witness: I am not sure.

Mr. Henderson: No further questions.

Cross examination by Mr. Parsonnet:

Q. You didn't hear Mr. Blum give any direct orders to Mr. Shuta or anyone else as to unloading the products or handling them—I will withdraw the question.

As a matter of fact, Mr. Coyle, before you saw Mr. Blum you saw Mr. Middleton, didn't you? A. I did.

Q. Didn't you ask Mr. Middleton to unload the product? (97) A. I did not.

The Court: Who is Middleton?

Mr. Parsonnet: Can it be agreed that Mr. Middleton is the supervisor of International Milk Company?

Mr. Henderson: Yes.

Mr. Parsonnet: And the manager.

The Witness: The manager. He was superior to me, yes.

Q. Mr. Middleton refused to unload, didn't he? A. I didn't ask him to unload it.

Q. You just answered that you did. A. I didn't ask him to unload it.

Q. Then your statement just a moment ago that you did ask him was in error?

The Court: Let's have the record read back.

Mr. Parsonnet: (After the record was read.) Perhaps I misheard. No questions.

Exhibit GC-2.
Frank Berardi, for Petitioner—Direct.

FRANK BERARDI, called by the petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. Berardi, you are a driver for Crowley Milk Company? A. That is right.

Q. Out of the Paterson plant? A. Out of the Paterson plant.

Q. On April 1, 1955, this year, did you attempt to make (98) a delivery at Sunrise Dairy? A. Yes, I did.

The Court: Now let me see. Are we going through practically the same route covered by the preceding witness?

Mr. Henderson: We are, your Honor. I confess this is purely corroborative.

The Court: I am just going to ask Mr. Parsonnet if he would agree that the substance of the witness's testimony would be in accord with that of Coyle.

Mr. Parsonnet: With some exceptions. There was some testimony given by Mr. Coyle which apparently related to facts not in the hearing or vision of Mr. Berardi. He is going into the cooler—for example he is going into the speaking with Mr. Blum.

The Court: All right, I guess we have got to take them up independently.

Mr. Henderson: I will try to cover two short points that are not purely corroborative.

Q. Mr. Berardi, on your first visit to Sunrise on Friday, April 1st, did you go into the cooler room? A. No, I didn't go into the cooler room as such. First there is a little anteroom where the men go in and you talk through the communication system to the cooler man in order to gain entrance.

Exhibit GC-2.
Frank Berardi, for Petitioner—Direct.

Q. Did you talk to the cooler room man? (99) A. Yes, I did.

Q. What is his name? A. I know him as Harold. I I didn't know his last name.

Q. Did you ask him to receive the goods? A. I asked him if he would receive the goods.

Q. What did he say? A. He said he had orders not to receive the goods as such.

Q. Did he say who he had orders from? A. At a later point while Mr. Coyle was asking him he said he had orders from someone else but at that point I didn't question him on that.

Q. Did you hear his later statement to Mr. Coyle? A. I heard his later statement.

Q. And who was it he said he had orders from? A. Mr. Del Vecchio.

The Court: He was the steward there, is that it?

The Witness: He said shop steward and on further questioning when he was asked his name he said Mr. Del Vecchio.

Q. Now on Monday, April 4th, when you went to International Mr. Coyle has already testified that Mr. Shuta had some conversation with you, Mr. Shuta being at the cab of the truck. What was that conversation? A. Just that I wanted to back my truck into the platform, but he told me to pull ahead, that there was a dispute between (100) 680 and Crowley, and I could not unload.

Q. Was there any discussion as to what instructions Mr. Shuta had? A. No, he referred to them. He said there was a notice posted on the bulletin board saying they were not to handle Crowley products.

Mr. Henderson: No further questions.

Mr. Parsonnet: If your Honor pleases, in respect to the discussion between Mr. Shuta and this witness, may I call your Honor's attention to the fact that this witness is an employee of the Crowley Company, that any inducement or encouragment to this witness is not the inducement or encouragement to the employee of the secondary employer. I want to make that distinction and understand why I do not find it necessary to cross examine.

Mr. Henderson: I have no quarrel with that statement, but the statement that he refers to as having been made by Mr. Shuta, nevertheless are statements of what Mr. Shuta said his instructions were.

The Court: What you are relying on is the statement that whoever the man was in the cooler room who was apparently a member of the local, he was ordered by the steward of the local not to receive the Crowley goods?

Mr. Henderson: That is correct, your Honor, and the further statement that was made to Mr. Berardi by Mr. Shuta (101) at International as to notice being posted on the bulletin board prohibiting them from handling Crowley products.

The Court: I didn't get that. What was that notice?

Mr. Parsonnet: I think you will concede, will you not that it was a copy of Exhibit P-1.

Mr. Henderson: P-1 and probably P-2. As to that I don't know.

Mr. Parsonnet: I understand that at that spot P-2 was not posted.

Mr. Henderson: As to that I don't know and you may want to bring in testimony on that.

Exhibit GC-2.
Roderick D. MacDougall, for Petitioner—Direct.

The Court: All right.

Mr. Henderson: No further questions. Do you want to cross examine?

Mr. Parsonnet: No.

The Court: Mr. Henderson, how much longer do you think your case will be?

Mr. Henderson: This will be a very short witness, your Honor, and I have two more, neither of whom will be very extensive, though conceivably they might be. I would estimate something like a half an hour.

The Court: Proceed.

RODERICK D. MACDOUGALL, called for petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

(102) Q. Mr. MacDougall, you are the plant manager of the Paterson plant of Crowley, is that right? A. Division manager.

Q. In that capacity you were familiar with the amount of business of the Paterson plant, their sales, the customers to whom you make sales and so forth? A. I am.

Q. In April of last year, 1954, approximately what were your total sales?

Mr. Parsonnet: Pardon me. Is this on commerce?

Mr. Henderson: This is not on commerce.

Mr. Parsonnet: I will concede that commerce is involved here.

The Court: That substantial interstate commerce was involved.

Mr. Parsonnet: Yes.

Mr. Henderson: That will reduce the questioning of the next witness but this is not on commerce.

The Court: Maybe we can make some more concessions and save more time. Can you? Why not ask Mr. Parsonnet pointedly if there are some other little formalities that you can stipulate?

Mr. Henderson: I think that I can arrive at the result with about two questions of this witness.

Q. In April of 1954 what were your—approximately what (103) were your total sales of the Paterson plant? A. Gross sales, $253,000.

Q. And in April of 1955 what were they? A. $171,000.

Q. $171,000? A. $171,000 minus. We did approximately $82,000 less business this April than last April.

Q. Have you received phone calls or communications from your customers on and around April 1st cancelling business? A. Yes, I did, and I got telephone calls shortly after March 10th when they had received a letter from Local 680 stating that they would not be able to receive our merchandise after April 1st. And many of our customers discontinued before April 1st and right on April 1st.

Q. Approximately how many customers discontinued? A. 22 large accounts.

Q. Are they still discontinued? A. Yes, they are.

Q. So that the loss that you referred to as something like $80,000 a month is continuing? A. That is right.

Q. Now have you observed pickets at your plant? A. Yes, I have, at Paterson, and also at Neptune.

Q. At Neptune? A. Yes.

(104) The Court: You say there were pickets at your plant?

The Witness: And at our plant at Neptune.

The Court: Neptune?

The Witness: That is right, sir.
The Court: At the shore?
The Witness: That is right.

Q. Did you observe the picket signs? A. Yes, I did.
Q. What did they say?

Mr. Parsonnet: The brief of the petitioner says and indicates they have no objection to picketing and that they are not attempting to restrain it. I see no relevancy of this issue because it is not relevant.

Mr. Henderson: I am perfectly willing to withdraw the question. I believe the answer of respondent admits the picketing in any event.

Mr. Parsonnet: We are picketing.
Mr. Henderson: No further questions.
Mr. Parsonnet: No questions.

LLOYD C. ANDERSON, called for petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

Q. Mr. Anderson, you are an attorney at law? A. I am.

Q. Are you general counsel of the Crowley Company? (105) A. I am.

Q. How long have you been general counsel? A. Approximately 30 years.

Q. What are your functions with respect to labor relations? A. I have personal charge of all labor relations generally, public relations of the company.

Q. Under company policy would labor relations be handled out of the central office in Binghampton or by the local

plant managers? A. The local people, our local plant managers and others are strictly forbidden to have anything to do with labor relations other than routine directions in connection with processing and operations of the plant. All labor relations must come through me.

The Court: In other words, you fix the policy?
The Witness: That is correct.

Q. Does the respondent in this case, Mr. Anderson, Local 680 represent any employees of Crowley as bargaining agent?

Mr. Parsonnet: I object. I don't think he knows whether they do or not.

Mr. Henderson: Your Honor, he has just testified that he conducts the labor relations for Crowley. However, I am perfectly willing to rephrase my question.

Mr. Parsonnet: I may state that the company has not (106) extended recognition to Local 680.

Mr. Henderson: That is what I was about to ask.

Q. Has the company recognized Local 680 as representative of any of its employees for bargaining purposes? A. No.

Q. To your knowledge? A. No.

Q. What labor organization has the company recognized as the bargaining representative of its employees? A. United Dairy Workers Association, an independent union certified from the National Labor Relations Board at the Binghamton, New York plant. The United Dairy Workers Association, Newburgh, local, at the Newburgh, New York, and Milltown, New York plants.

Q. How about the Paterson branch? A. The Paterson plant bargains—that is, the employees of the Paterson

Exhibit GC-2.
Lloyd C. Anderson, for Petitioner—Direct.

plant bargain as a unit, that is to say, they bargain all of the employees together, and they sit down together at one time with the company.

Q. Is there a labor organization at the Paterson plant? A. They call themselves the collective bargaining committee of the Crowley Milk Company, Paterson plant. I believe under the law they are a union, but opinions might differ.

Q. Now has the respondent, Local 680, ever made any demands on Crowley for recognition? (207) A. Are you referring to recent times?

Q. At any time. A. Not since February, 1965.

Q. Did they make a demand at that time? A. At that time they claimed to represent employees of the company.

Q. Have they made any demands since that time? A. None.

Q. Has any other business local sought recognition from your company? A. In 1963, Local 680, Binghamton—

Mr. Parsonnet: I object to any reference to any other local in any other plant. I don't think that has materiality to this case.

Mr. Henderson: Your Honor, our position is, charges that one of the bases of the union respondent's activities in this case, is to promote recognition in Crowley not only of the respondent 680, but also other business locals of other plants.

Mr. Parsonnet: There has been no evidence whatsoever to justify any such contention.

The Court: I suppose that is the purpose of this evidence, isn't it?

Mr. Henderson: Yes, sir.

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Exhibit GC-2.
Lyold C. Anderson, for Petitioner—Direct.

(121) The Court: You know having been up there on the hill for 20 years I can appreciate Judge Speakman's situation, and I wouldn't do anything—

Mr. Parsonnet: Of course.

The Court: —I wouldn't do anything finally without consulting with Judge Speakman actually.

Mr. Parsonnet: That would help a great deal.

The Court: But I think we have got to have this conference with the District Attorney as soon as we can. You are going to find out, Mr. Humphries?

Mr. Humphries: Right.

The Court: Let's proceed as we were.

Q. Has Local 338 requested recognition? A. No.

Q. Has Local 338 ever requested recognition from Crowley? A. Local 338—I was referring before to recent times. Local 338 in 1944 or '45 made the claim that they represented our employee of the company at Newburgh, New York. We were agreeable to going along on an election and the matter was dropped. Since then about 1950—they did not make any direct claim or representation but they did file a charge against the company claiming discriminatory discharge, which charges were dismissed as not supported by the evidence. Outside of that since '50 or '51, there has been no contact (122) or outward claim made by 338 as representative body or anything at Newburgh or elsewhere.

The Court: Now, gentlemen, here is the situation, I can get hold of the District Attorney at 2:30 apparently. I suppose we had best really feed the inner man or we will start growling. I am wondering if we cannot suspend the taking of this testimony in order to return to my chambers.

Mr. Parsonnet: At 2:30.

Exhibit GC-2.
Lloyd C. Anderson, for Petitioner, Recalled—Direct.

The Court: Very well. Don't you think that is wise under all the circumstances because it seems to me that to take stock of our general situation is highly desirable before we leave today.

Mr. Parsonnet: I would think that is desirable, sir. I am disturbed only by one thing, the longer we take stock the less time we will have to finish our testimony.

The Court: I won't delay.

Mr. Henderson: I will gauge the finish of all of our witnesses in a manner of ten or fifteen minutes on direct examination. Now, Mr. Parsonnet can gauge his own cross examination.

Mr. Parsonnet: I presume you have seen that I have been limiting myself on cross as much as I could.

* * * * * *

(124) LLOYD C. ANDERSON, having resumed the stand on further direct examination.

Direct examination (continued) by Mr. Henderson:

Q. Mr. Anderson, I forgot exactly where we were, but let me ask you, have you——

The Court: What you last asked him was as to Local 680 and 338 concerning their request for their recognition.

Q. Have there been any requests for recognition brought to your attention in your official capacity with Crowley's Milk Company, requests for recognition by either of those unions this year, this coming year? A. No.

Exhibit GC-2.
Lloyd C. Anderson, for Petitioner, Recalled—Direct.

(125) Q. Have you observed picketing at the Newburgh and Binghampton plants of Crowley's this year? A. I have.

The Court: Did not I understand that the respondent's answer admitted the picketing?

Mr. Parsonnet: At the Paterson plant and at the Neptune plant. We are not picketing in any other areas.

Q. Did you observe the picket signs? A. I did.

Q. What did the picket signs say? A. The picket signs I saw at Newburgh, New York, and Binghampton, New York, stated "Crowley employees join local teamsters Local 338."

Q. To your knowledge do you know whether Crowley—whether any of Crowley's employees are members of the teamster's union? A. We have no knowledge of any affiliation of any of our employees with any union other than United Dairy Workers or one of its locals.

Q. Do you know of any labor dispute between Crowley and the respondent 680? A. There is no dispute between Crowley's and Local 680.

Mr. Parsonnet: I object. That is a conclusion not to be drawn by this witness.

The Court: You know of none?

(126) The Witness: I know of none.

Mr. Parsonnet: I submit, sir, that the statement "I know of no labor dispute," is a conclusion of law which your Honor would have to determine on the basis of the facts.

The Court: That may be but if he has got to be asked the questions going right down the line as to all the possible categories of labor disputes, does

Exhibit GC-2.
Lloyd C. Anderson, for Petitioner, Recalled—Direct.

that exist, does that exist, does that exist, it will take a long, long time.

Mr. Parsonnet: Well, if your Honor will accept it for what it is worth as a conclusion, I will not object, but I feel that as a statement of fact it is an interpretation of law rather than a statement of fact.

The Court: Do I understand this from what you say that there are some differences of opinion betweent you and some international local but that you did not consider that difference of opinion to be a labor dispute; is that it?

The Witness: What I wish you to understand, your Honor is, that so far as anything has come to my attention or the company's attention, there has been to me no opinion, no desire of any kind, character or extent that has been expressed as to any wish or desire on the part of any union anywhere of anything or for anything from Crowley Milk Company.

The Court: You know of no difference of opinion as far as expressed to you?

(127) The Witness: That is right.

The Court: Between Crowley and any International union?

The Witness: That is correct.

Mr. Henderson: I might particularize with just two brief questions on that.

Q. Has respondent Local 680 or has any other teamster local made any demand to your knowledge on Crowley's Milk Company this year? A. None whatever.

Q. Do you know whether respondent Local 680 or any other teamster local has engaged in any organizational ac-

tivities at Crowley's plant this year? A. To my knowledge and so far as anything has been communicated to me in any way there has been no organizational activity on the part of the teamsters or any other union at any of Crowley's plants.

Q. Has any representative of Local 680 communicated with you this year?

Mr. Parsonnet: May I settle that. We admit they have not in any way communicated with the company.

Mr. Henderson: I am asking the witness has any representative of Local 680 communicated to you this year any statement as to the object of respondent's activities?

A. Absolutely not, nothing.

(128) Q. Have they communicated to you in prior year? A. In prior years?

Q. Yes. A. The only communication we ever got from Local 680 was a simple telegram in February, 1948 which said in substance that they claimed to represent employees of the company at the Paterson plant. The personnel of the plant incidentally has changed probably five times completely in the intervening period.

Mr. Henderson: No further questions.

Cross examination by Mr. Parsonnet:

Q. Mr. Anderson, did you not receive from Local 680 or from me a copy of the charges charging the company with unfair labor practices? A. I received a copy of a charge of unfair labor practice from your office and an amendment of it.

Exhibit GC-2.
Lloyd C. Anderson, for Petitioner, Recalled—Cross.

Q. You say you know of no attempt to organize the employees this year? A. That is right.

Q. Did you not just testify that Local 338 is carrying signs requesting the employees of Crowley's to join Local 338? A. I did.

Q. Don't you think that is requesting them to join Local 338? A. No, no, because——

(129) Q. I didn't ask you because. I just asked you whether you thought it was or not. You know also that Local 680 is picketing at Paterson and Neptune, don't you? A. I do.

The Court: Can I learn to save time whether they bear the same signs?

Mr. Parsonnet: The testimony was that they were different. The Local 680 sign is, "Crowley Milk Company unfair to teamster union 680," or words to that effect. The sign in Local 338 is, as testified to by Mr. Anderson——

The Court: Was to join?

Mr. Parsonnet: Yes.

Now if your Honor will recall Section 18(d) of the agreement refers to Local 338 as well as 680 and others.

I have no further questions.

Mr. Henderson: No further questions, your Honor.

Your Honor, we have no further witnesses at this time. Possiby we might have some in rebuttal on Tuesday, but I can't say as to that.

The Court: Save for rebuttal you rest?

Mr. Henderson: That is correct, your Honor.

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Exhibit GC-2.
Richard Keber, for Respondent—Direct.

(144) RICHARD KEBER, called by the respondent, was sworn and testified as follows:

Direct examination by Mr. Parsonnet:

Q. Mr. Keber, you are the secretary-treasurer of the respondent local union, are you not? A. Yes, I am.

Q. And you have been secretary-treasurer for how long? A. Three and a half years.

Q. Before that were you an officer of the union? A. I was.

Q. What? A. Business representative.

Q. For how long? A. 17 years.

(145) The Court: Is business representative different from shop steward?

Mr. Parsonnet: Oh, yes, sir. The business representative is an elected officer of the Union.

Q. When you were business representative, Mr. Keber, who made policy for the Union in matters concerning which you were involved? A. The executive board of our Union.

Q. And in the absence of an executive board meeting who would make the policy? A. The officers of the union.

Q. And you were one of the officers? A. Yes, sir.

Q. And you engaged in the making of policy? A. Yes, sir.

Q. Will you please tell us in your own words the story of the original development at Crowley's starting in February, 1948? A. February, 1948, 17 of Crowley's employees——

The Court: Let me interrupt a minute. Isn't this the very subject matter that you and Mr. Henderson were going to try to stipulate during the morning recess?

Mr. Parsonnet: I beg pardon. If that is so I will withhold testimony on it until we see if we can stipulate.

The Court: Isn't it?

(146) Mr. Henderson: I believe so.

Mr. Parsonnet: Very frankly, sir, in a telephone call with Mr. Henderson I discussed this question of stipulation on the question of the dispute and my understanding from him was that the facts would have to be shown. We might be able to stipulate the facts but not the conclusions. Now is that correct?

Mr. Henderson: Yes, I think so. I think we can probably agree on what the facts were. The conclusion to be drawn from them would be the only dispute.

The Court: Would it be wise if you think that's a fair chance, instead of taking a long time to go through all this history more or less ancient with cross examination that I assume must flow, that you take up first your evidence directly bearing on the present controversy and delay Mr. Keber until later if necessary.

Mr. Parsonnet: He is involved in the other testimony as well.

The Court: Then turn to the other testimony.

Mr. Parsonnet: My I ask just one question relating to that?

Q. Mr. Keber, you discontinued picketing Crowley in 1949, did you not?. A. Yes, about a year and half later after it started.

Q. And why did you discontinue?

(147) Mr. Parsonnet: This I am offering because I am sure there can be no stipulation on this one point.

Exhibit GC-2.
Richard Keber, for Respondent—Direct.

Q. Why did you discontinue the picketing, sir? A. We discontinued picketing at that time first because of the cost involved and, second, because our International was creating what was known as the Eastern Conference of Teamsters and we were advised at that time when the Eastern Conference of Teamsters was created that in order to handle the dispute like we had with the Crowley Milk Company that we would be better to handle it better after the Eastern Conference of Teamsters was created.

Q. I see. Now was the Eastern Conference of Teamsters created? A. Yes.

Q. And thereafter did you communicate with the officers for the purpose of discussing the Crowley case? A. Yes.

Q. Was that meeting held? A. Yes.

Q. As a result of that meeting was any action taken with respect to Crowley? A. We did.

Q. What did you do? A. We decided we would start picketing the Crowley Milk Company at their Paterson branch and also to try to get the (148) cooperation of the people, of those who signed up with our local, to get their cooperation in discontinuing the Crowley products.

Q. Had you ever done that before with respect to the same people, relating to Crowley? A. Yes, we have.

Q. That was in 1948? A. That is right, sir.

Q. I show you Exhibit P-1 and ask you if that is the letter that you sent to the companies with whom you have contracts? A. Yes, it is.

Q. All of them? A. All of them.

Q. How many companies are there? A. Between 50 and 60.

Q. And there are more branches than companies, are there not? A. Close to a hundred branches.

Q. Did you send to all branches or just to the companies? A. I sent them to all the branches.

Exhibit GC-2.
Richard Keber, for Respondent—Direct.

Q. In addition to that, Mr. Keber, did you send a copy of that letter to the shop stewards? A. Yes, I did.

(149) Q. And Exhibit P-2 is the letter which you enclosed with the letter P-1, is that correct? A. It is, yes, sir.

Q. To how many shop stewards did you send them? A. Approximately 100.

Q. There are assistant shop stewards in all branches too, are there not? A. Yes, there are.

Q. About how many of them are there? A. There is one assistant for each steward, approximately another 100.

The Court: Then do I understand you really sent out about 300 of these letters?

Mr. Parsonnet: No, he did not send a letter to the assistant shop stewards.

Q. Now you are for the Union in general charge of this case, are you not? A. Yes, I am.

Q. In the past have you attended all shop stewards' meetings? A. Yes, I have.

Q. Mr. McGinley Lawrence McGinley is president of the Union, is he not? A. Yes, sir, he is.

Q. And he and you share in the management and the (150) establishment of policy for the shop stewards, is that correct? A. Correct.

Q. You have two business agents now, do you not? A. Yes, we do.

Q. What are their names? A. Albert Cooke and Anthony Iorio.

Q. Those offices are subordinate to the secretary-treasurer, are they not? A. They are, sir.

Mr. Parsonnet: Mr. Henderson, I am leading but I trust you don't object to this kind of leading.

Mr. Henderson: No, I don't.

Exhibit GC-2.
Richard Keber, for Respondent—Direct.

Q. In your shop stewards' meetings has there been any discussion about what is to be done in the event an employer gives an order which the steward considers is in violation of the contract? A. Yes, there was. In addition it was also at our regular meetings.

Q. At your regular meetings as well? A. That is true, sir.

Q. What are the instructions and orders given to stewards and members? A. The instructions given to the stewards as well as all other members are that because of the clause in our contract which states that an employer may discharge an employee for (151) refusing to obey orders except in cases where it jeopardizes life or health they must obey those orders.

Q. And if the steward believes they are in violation of the contract, what must they do? A. They must call the Union office.

Q. And report the fact, is that it? A. And report the facts, that is true.

Q. I refer you to Section 19(e) of the contract and ask you if that is the one to which you refer. A. That is right, sir.

Mr. Parsonnet: May I read it into the record, sir?

The Court: Yes.

Mr. Parsonnet: It starts off "The employer may discharge or dismiss any employee for good cause upon one week's notice or one week's pay in lieu of notice except that the employer shall have the right of summary dismissal upon any one of the following grounds." Then listing them, Section (e) is as follows:

"Direct refusal to obey the orders given by the proper party unless such order jeopardizes life or health."

Q. Is that what might be called standing operating procedure of the Union? A. That is right, sir.

Q. And if you are informed that a steward has instructed employees not to obey orders, what action do you take? (152) A. We bring the steward and the member involved into the union office immediately and discuss the problem with him and if the steward disobeys the orders of the union he is removed as a shop steward, that is if he deliberately disobeys orders.

Q. Now in Exhibit P-1——

The Court: Is that embodied in any written document?

Mr. Parsonnet: No, only that, your Honor, in our contract the Union has the right to appoint a shop steward and because of that authority vested in the Union the Union must have some control over the shop stewards.

The Court: What I mean is is there anything in black and white that you give the shop steward or the members advising them of this condition?

Mr. Parsonnet: We give each shop steward copies of our contract and each of our members have a copy of our contract and that clause is pointed out to them where they dare not disobey the orders of their employer.

The Court: On pain of discharge, that is to say, if they disobey orders they know they face discharge.

Mr. Parsonnet: Yes.

The Witness: That is right, sir.

The Court: But there is nothing in the contract itself, although I have not read it, there is nothing in the (153) contract itself which explicitly says "Now members of the Union not only do you face

discharge if you disobey but it is the union regulation that you should obey."

Mr. Parsonnet: Oh, no, that is not in the contract, sir. Those are the regulations that are given when orders are given by an employer and they are what your Honor has referred to as standard operating procedures.

Mr. Henderson: I suggest that the answer might better come from the witness.

Mr. Parsonnet: I thought your Honor was directing his comment to me.

The Court: I really wasn't but I was looking in your direction so I can't blame you.

Do you want to have it stricken out, the statement of counsel or not?

Mr. Henderson: No, sir. It is in the record now and it might as well stand.'

Q. Local 680, does it have any by-laws? A. No, we don't.

Q. You operate under what? A. We operate under our International by-laws and Constitution.

Q. I show you Exhibit P-1 and refer you to the last three lines which read, "Your cooperation in this regard is urgently requested in order that we may avoid taking (154) steps to enforce our contract." What did you mean by that Mr. Keber? A. We meant by that the same as any other dispute or controversy that may arise with an employer, that if we cannot agree we must agree to take it to arbitration, and whatever the arbitrator decides that is final and binding on both parties.

Q. Did you mean by that in any way that you woud cause a stoppage of work or a strike? A. No, sir, we did not.

Exhibit GC-2.
Richard Keber, for Respondent—Direct.

Q. I show you Exhibit P-2 and refer you to the words "Please see to it that all members under your jurisdiction will abide by the enclosed letter." What was meant by that, Mr. Keber? A. That letter was meant that should the shop stewards have any problems concerning the Crowley products that they must immediately contact the Union office.

Q. I see. Were they to understand by that the members of the Union were not to handle Crowley products under any circumstances?

Mr. Henderson: I object, your Honor. I think that is leading.

The Court: That is quite leading.

Mr. Parsonnet: I am sorry, sir. I withdraw it.

Q. What was your meaning with respect to the handling (155) of Crowley products by the members? A. We through our letter and the contact with the 50 or more companies that we have tried to persuade the employers not to handle the Crowley products——

Mr. Henderson: I ask that that be stricken as not responsive to the question.

The Court: That objection lies in his mouth.

Mr. Parsonnet: I have no objection if he clarifies his statement by a preliminary explanation.

Q. Proceed, Mr. Keber.

The Court: You see what he asked you was not what you meant by your letter to the employer itself but what you meant by your letter to your steward which enclosed a copy of the letter to the employer.

The Witness: We meant that the shop steward who is the representative of our local union locally

in each branch in all disputes and controversies that arise in that particular branch or plant, they must first be discussed of course with the shop steward—we took it upon ourselves to feel that the employers would contact the shop stewards regarding our letter to them referring to the Crowley products. Our shop stewards because of our meetings and instructions to them know that when a letter like this is sent out that they are to do whatever they can to have an employer cooperate with the letter and if the employer refuses they then must of (156) course call the union office for further instructions and in this particular case we have only had as far as I know four calls from the fifty some-odd companies where the employers did not exactly refuse to cooperate with the letter but called up and said that they had a certain problem because of the letter that we sent.

The Court: I confess I am still not clear what your answer to Mr. Parsonnet's question is.

Mr. Parsonnet: May I try to bring it out further, sir?

The Court: Let me see the letters P-1 and P-2. (After looking.) You see, Mr. Keber, the enclosure says that the employer cannot object to his employees refusing to handle the products of another employer with whom there is a labor dispute. Now in that letter with that information as to what your members are authorized to do by their contract with their own employer there was forwarded a letter from you to the shop stewards. That letter said to the shop stewards, "Please see to it that all members under your jurisdiction will abide by the enclosed letter." And as I understand Mr. Parsonnet what he wants to know is what did that mean that

the shop stewards were to do with regard to the employees of the secondary employer.

A. Do you want me to answer that, your Honor?

The Court: Yes.

(157) The Witness: It meant our shop stewards were to inform the rest of the employees and show them a copy of the letter that we sent to the employer requesting the employer to cooperate, to discontinue handling the product and if an employee was instructed directly, directly instructed by the employer to handle it, that they must handle it and immediately contact the Union office.

The Court: But it would be the shop steward who would contact the Union office, wouldn't it?

The Witness: Not all the time, your Honor. Sometimes—many times the employee if he cannot reach the shop steward, if it happens to be the shop steward's day off or the shop steward may be on vacation, that the employee directly calls the Union office, and our members know that because under the Taft-Hartley Act if you say one word one way and you say the same word another way it means a different thing. We are so confused with this Taft-Hartley Act we don't know if we are saying the right or wrong thing and that is the reason why at our meetings we discuss it with our people and tell them if they are not too sure that they must immediately call the Union office.

Mr. Parsonnet: May I respectfully submit, sir, that perhaps my question that I was stopped from asking was leading but it would have procured the information rather quickly and I don't think im-

properly. May I proceed along (158) that line subject to being stopped if I am leading to far, sir?

The Court: Yes.

Q. Let us suppose, Mr. Keber, that after April 1st according to your instructions and your intentions as contained in the letter, after April 1st, a delivery of Crowley was made and the employer did not give any instructions. Assume it was the International Milk. The employer did not give any instructions that the milk was to be handled. What did you expect would be done? A. We would contact the shop steward——

Q. Pardon me. I don't think you got the question if you answer it that way. You sent a letter to the steward? A. That is right, sir.

Q. Now you did not contact the steward in any other way, did you? A. No, I did not.

Q. On April 2nd assume that a delivery of Crowley's product was made and in some way got into the possession of the International Milk, what was it you expected your members to do with that milk or cheese or whatever it was in the absence of any direct order of the employer? A. I would expect that they wouldn't handle it.

The Court: That they would not?

The Witness: Would not handle it.

(159) Mr. Parsonnet: That was precisely the thing I tried to get out.

(Question read back at request of Court.)

Now, if however the employer gave an order to any of your members asking that they handle it, what was expected would be done?

A. We would expect they would handle it and immediately call the Union office.

Q. Now you state that only four employers in any way communicated to you any idea that they didn't like the provisions of your letter of March 9th, is that correct? A. That is right, sir.

Q. Which ones were they? A. International Milk Company, Sunrise, and an attorney for—I believe it was the Thompson Dairy—I think I'm mistaken on that—I think it was North Jersey Dairy attorney—an attorney for North Jersey Dairy, and I think that is all.

Q. How about Thompson? A. I don't believe that they phoned. I think that they wrote a letter. I can't remember them. I don't know.

Q. Did any other companies write letters or anything else? A. No.

Q. You heard the testimony of the manager of Crowley's plant to the effect that 22 companies dropped their business (160) with Crowley's, is that correct? A. Well, I heard his testimony but I couldn't hear a good deal of it. I didn't hear that part.

Q. Tell us if you will what happened with respect to Mr. Blum of International Milk Company? A. Will you say that again?

Q. Let me withdraw that question a moment. Between the writing of your letter of March 9th and up to date have you given any specific instructions concerning the Crowley dispute at any special or regular meetings of the Union or otherwise to stewards of your Union?

The Court: You or any other officers of the Union.

Mr. Parsonnet: All right, sir.

The Witness: No, we have not.

Q. The only instructions that have been given to the Crowley shop stewards by you or any other officer relate

to the letter of March 9th that you sent to them, is that correct, Exhibit P-2? A. The only instructions did you say?

Q. The only instructions that were given to the stewards in any way were in the letter of March 9th that you forwarded to the stewards? A. In letter, not in person.

Q. Is that right? A. That is right, sir.

(161) The Court: I suppose you talked to some of them.

Mr. Parsonnet: I mean general instructions. I am coming to the other.

Q. You have met with the stewards who have been in Court the last few days, have you not? A. Oh, yes.

Q. And you have met with certain other stewards who were called to the Labor Relations Board to give their stories as to what happened? A. Yes.

Q. Those, however, were not meetings for the purpose of giving them instructions, were they? A. They were not, sir.

Q. Do you know of any conversation—withdraw that. Subsequent to—withdraw that.

Prior to the date of the institution of this action, Mr. Keber, did you know of the meeting between Mr. Iorio and Mr. Ellias as your steward at North Jersey Dairy Land on April 2nd? A. Prior to what date?

Q. Prior to the time that this suit was started, did you know that? A. Oh, yes.

Q. You did? A. Yes, I did.

(162) Q. Did Mr. Iorio go to North Jersey Dairy Land plant at your instructions? A. Yes, he did.

Q. What instructions did you give him? A. Why we understood that Frank Ellias, who happens to be our shop steward at the North Jersey Dairy Land gave direct orders not to handle Crowley's products and that we felt that was

a mistake, you know, on his part and for that reason we sent Mr. Iorio there to straighten the matter out.

Q. Other than that particular instruction to Mr. Ellias do you know of any other particular instruction that has been given to any steward? A. Not a single one.

Q. Now, Mr. Keber, will you describe what happened on April 4th with respect to Mr. Blum's telephone call? A. With respect to who?

Q. Mr. Blum's telephone call. A. Why, Mr. Blum called and said he had a problem regarding the letter that I sent referring to the Crowley product and he said that he was informed that there was no labor dispute as I contended in the letter that I sent and he also said that he had a contract with Crowley's Milk Company.

Q. What did you say to him? A. I told him that he was informed incorrectly regarding the labor dispute and I told him exactly what happened in 1948. (163) Do you want me to say that now?

Q. Just describe generally what you told him. Don't go into details. A. That in 1948, 17 out of 21 employees of the Crowley Paterson branch signed as members in our Union and that when we contacted the Crowley Milk Company in Binghampton and informed them that we represented the majority of their employees and requested them to sit down with us and work out a contract, they not only refused but they discharged three of the employees the very next day, and because of that discharge a strike started.

Q. Did you continue to explain any continuing dispute? A. No, I didn't go into that any further but I said definitely if he was informed by any sources that it was misinformation—that it was not the correct information that he was receiving, that he probably got that from the Crowley Company.

Q. I see. Now, did you talk about his contract with the Crowley Company? A. Yes, I did. I said also regarding

the contract that you say you have with the Crowley Company, to me it seems like a phony contract because usually companies don't tie themselves down to any particular company to handle their product, but nevertheless if it is a contract you also have a contract with us and we expect you to live up to it.

Q. Did he ask you in any way whether you had given (164) official orders to your members not to handle the Crowley products? A. No, I can't remember that he asked me that.

Q. Did he refer to anything as being official from the Union? A. Not a single word that I can remember. I think he said is this an official letter and I said it certainly is and if you didn't like what was in the letter why did you wait so long; what didn't you call us before.

Q. I see. Did you tell him in any way that you had given orders to your members not to handle the product? A. No, I did not, sir.

Q. Did you in fact give orders to any members or give orders of any kind other than are included in Exhibit P-2? A. That is where I sent the letter regarding the other letter to the company?

Q. Yes. A. No other instructions.

Q. At the end of the conversation with Mr. Blum did he have anything to say? A. Nothing, only he said, "Well, I guess there is nothing that can be done about it." I said, "Not as far as I know unless you want to go to arbitration."

Q. Then what did he say? A. He said, "Well, I guess that's all," then hung up.

(165) Q. Did he tell you in any way that he would or would not take products from Crowley? A. He did not know, sir.

Q. Now tell us about the conversation with Mr. Adlerberg. A. Well, with Mr. Adlerberg it was a little longer.

Mr. Adlerberg first called and said he was calling regarding the letter that he received to discontinue the Crowley products and he said that he had been doing business with Crowley for 20 years or more and that they always treated him pretty good. They supplied him with milk when milk was hard to get and that he was also informed that there was no labor dispute, and that he had a contract with the Crowley Company.

Q. And what did you say to him? A. I told Mr. Adlerberg that there are many companies that gave companies like his company good service for 20 years and I told him that I was sorry to hear about that, but there is really nothing I could do about it, that I expected him to live up to our contract, that we also had a contract with him, stating that if we are in a labor dispute with another company that they shall not aid this other company. And I also said to him that I am a little bit surprised if he felt so kindly toward the Crowley Company, that he certainly should have contacted me before the time that he did, that we sent the letter out on March 9th, and that it was rather late for him to call me at this time, but however, I told (166) him the same thing, that I thought it was a phony contract that he had with Crowley, that I can't understand how a legitimate company can tie themselves to a company like Crowley or any other company to handle their products because products sometimes are not—they don't deliver them the way they say that they will deliver them and I believe that every company must have a right to make a change if the product is not proper. So I told him I thought it was wrong to do that, but nevertheless he also had a contract with us and I also told him the same thing as I did Mr. Blum, that I believe where he received his information from that it was—that there was no labor dispute was through the Crowley Company. That is about all I can remember of the discussion with Mr. Adlerberg.

Q. Did he tell you in any way that he had thrown your letter in the waste basket? A. No. The first time I heard that was the other day, but that doesn't surprise me with Mr. Adlerberg.

Q. When you referred to the provision of your contract that they shall not aid other companies, is that provision 18B of your contract? A. That is right, sir.

Mr. Parsonnet: That is 18B of D-1. If your Honor please, that reads "The Union shall not call, sanction or enforce any sympathetic strike of its members, and the (167) employer shall not aid any other companies in any fight that shall be waged against the Union."

Q. At the end of that conference did he have anything to say about whether he would handle the products or no? A. He did not. He was very excited. He didn't say anything about that that he would handle it. He said, "Well, if that's the way you want it O. K." I said, "That's it exactly unless you want to go to arbitration."

Q. He said say, "If that's the way you want it O. K."? A. That's right.

Q. Now you received a letter from Joseph Thompson & Sons dated March 31, 1953, is that correct? A. Yes, I did.

Q. What did you do with it? A. I immediately mailed it to you.

Q. You mailed it or delivered it which, do you remember? A. I don't. I may have delivered it or mailed it.

Q. I call your attention to the fact that the letter is dated March 31, 1955 and the letter from you to Thompson is dated April 1st. A. That is right.

Q. And what did I do, if you know? A. You dictated a letter in answer to this letter to our secretary while I listened in on the other wire.

Q. And what did you do with that dictation? (168) A. The girl made it up and I sent it to Mr. Thompson.

Q. And that is this letter, Exhibit P-5? A. That is right.

Mr. Parsonnet: By the way, I notice, if your Honor please, that P-4 and P-5 are marked for identification. Have they been admitted in evidence?

Mr. Henderson: I believe they have been offered and I thought they were accepted.

Mr. Parsonnet: I don't recall at this time.

The Court: I don't remember the offer.

Mr. Parsonnet: Do you want them marked?

Mr. Henderson: Yes, indeed I want them marked.

The Court: I suppose the defendant has no objection.

Mr. Parsonnet: No objection.

The Clerk: P-4 and P-5 formerly marked for identification now marked in evidence.

(P-4 and P-5 marked in evidence.)

Q. I show you Exhibit D-2—I beg your pardon—did you have any other talk with Mr. Thompson or anyone representing him? A. I can't remember. I don't think so. I can't remember.

Q. Now concerning the North Jersey Dairy Land did you have any talk with anyone representing them? A. I talked I believe with their attorney; a man called up and said he was representing them—he was the attorney (169) rather, representing the North Jersey Dairy Land.

Q. And what did he say? A. And he said that he was informed that there was no labor dispute and I asked him if the North Jersey Dairy Land showed him the clause in our contract that says an employer shall not aid another employer who is in a labor dispute with our union. And he

said yes, they did but he still feels that we are in violation. I said I am sorry about that, you will have to contact our attorney and he will give you the answer as to whether a violation or not is present.

Q. Did you then receive Exhibit D-2? A. Yes, I did.

Q. What did you do with it? A. I referred that to you.

Q. Did I advise you what I was doing with it? A. No, I can't remember that you ever advised me anything about that letter.

Mr. Parsonnet: At this point, if your Honor pleases, may I refer to the suggested stipulation of the other day. I said that a portion of the stipulation would be covered by Mr. Keber's testimony, but if your Honor will recall I suggested that it be stipulated that if I were called I would testify that I received this from the Union and that I advised the Union that I decided not to answer the letter because it had already been covered by the telephone call (170) between Mr. Keber and the attorney for the company.

The Court: There is no objection to that going into the record?

Mr. Henderson: No objection.

Mr. Parsonnet: That is all, subject to the possibility of testimony concerning the earlier dispute.

From this witness?

Mr. Parsonnet: From this witness.

Cross examination by Mr. Henderson:

Q. Mr. Keber, turning to your discussion with Mr. Adlerberg did you hear Mr.—I am not sure if you covered this in your direct—did you hear Mr. Adlerberg testify when he was on the stand that he had asked you if you had given instructions to employees not to handle Crowley's

products? Did you hear him testify to that? A. He may have. You see I was sitting in the back there and I couldn't get everything that was said, specially the questions that you asked because you speak rather low.

The Court: Now, gentlemen, let's try and not pit these witnesses individually one against the other. Without that introduction as to what Adlerberg said ask him what he said or did.

Q. In that conversation with Mr. Adlerberg, Mr. Keber, did he ask you anything with respect to your instructions to his employees or any employees generally not to handle (171) Crowley's products? A. No, sir, he did not.

Q. Did you say to him that—and did he ask you anything about whether the shop steward had been acting under your instructions? A. He never mentioned the shop steward's name during his conversation with me.

Q. Did he mention the shop steward as an officer? A. No, sir, he never did.

Q. As an officer? A. No.

Q. Did you say anything to him about the shop steward acting under your instructions? A. No, sir, I did not.

Q. Now you said on direct examination that you referred to your contract with Sunrise and its requirement that the employer shall not aid other companies which are in a labor dispute with the Union. Did you understand that contract to mean that the continuance of normal business relations between Crowley and Sunrise could constitute aid of Crowley's by Sunrise? A. I understood that the company—a company who deliberately aids in handling products from a company that is in dispute with the Union, that they are aiding the other company. Yes, sir.

(172) The Court: Don't you see that doesn't answer his question. He wants to know if you would

consider it an aid of Sunrise to Crowley if Sunrise simply continued under its contract to accept Crowley's goods.

The Witness: Yes.

Q. You would so consider it? A. Yes.

Q. Very well. Now with respect to your letter to Thompson Dairy, which is Exhibit P-5——

The Court: Then if I understand it the way you construe your contract with the secondary employers is that if you have a labor dispute with Crowley they are bound to cancel their contracts with Crowley?

The Witness: That is the way I would construe it, your Honor, and if they didn't agree with us that we would have to go to arbitration and whatever he decided would be final and binding.

Mr. Parsonnet: It may be impressive at this point, if your Honor please, to point out that this is a question of contractual interpretation which under the contract would be subject to arbitration. In the past there have been arbitrations over this clause, not dealing with Local 680 but other locals. I can, if it seems appropriate to your Honor, try to find the arbitration awards which I recall quite distinctly——

(173) The Court: Well——

Mr. Parsonnet: I don't think it's particularly important in this case because here we are dealing with an alleged secondary boycott which is a different situation.

The Court: Would you construe it to cover a refusal by secondary employees to take the products of Crowley, not a refusal of the secondary employer?

Mr. Parsonnet: That is correct, sir.

The Court: To take products of Crowley.

Exhibit GC-2.
Richard Keber, for Respondent—Cross.

Mr. Parsonnet: May I at this point suggest to your Honor that the Act itself doesn't use the word secondary boycott at all. The phrase has come to be used with respect to the section, but if you recall the section, it says "induce or encourage the employees to refuse." So that is the essence of the allegation in this case.

The Court: All right, to put the matter in another way, Mr. Keber, then, you consider that your contract with the secondary employer requires these employers in the event of a dispute, a labor dispute with Crowley's, to help the Union and not to help Crowley, or specifically to help the Union by cancelling the contract with Crowley's?

The Witness: Yes, sir.

Mr. Parsonnet: May I just call to your Honor's attention that the words labor dispute are not in Section 18B. It is "aid any other companies in any fight that may (174) be waged against the Union."

The Court: This is another section of the statute you are referring to or your contract?

Mr. Parsonnet: Yes.

The Court: And the contention is that that clause in so far as it affects the employers making them aid the Union and harm the employer with whom they have a dispute is lawful because the Act doesn't cover pressure on employers.

Mr. Parsonnet: That is precisely so, sir. The cases are unanimous on that at least.

The Court: I am glad to know they agree on one thing.

Q. Mr. Keber, I call your attention to your letter to Thompson Dairy which you just testified was dictated by Mr. Parsonnet, and signed by you. A. Yes, sir.

Exhibit GC-2.
Richard Keber, for Respondent—Cross.

Q. Petitioner's P-5, I call your attention to the last sentence, the last two sentences, "You are at liberty to request arbitration and if you do we shall engage in arbitration proceedings with you. Meanwhile however our members will not handle Crowley's milk or milk products."

The Court: This is a letter from whom to whom?

Mr. Henderson: This is Petitioner's Exhibit P-5, your Honor, from the Union, respondent, to Thompson Dairy, in response to Thompson's letter of March 31st to them. Thompson had asked for arbitration and had suggested that (175) in the meantime they be permitted by the Union to continue to handle Crowley's products, and I have now called Mr. Keber's attention to particularly the last sentence there stating flatly that "meantime" pending arbitration "our members will not handle Crowley's milk or milk products." And I wonder if you could explain that, Mr. Keber.

The Witness: Well, I can explain that in this way.

Mr. Parsonnet: May I suggest you explain it if you know what was intended by it?

The Court: He wrote the letter, didn't he? He testified——

Mr. Parsonnet: He testified that I dictated it and he just signed it.

Q. Do you know what it means? A. I think I do.

Q. Well, what does it mean? A. The meaning is that because of the lateness of the letter that we received from Thompson's Dairy that because of that fact we would, our members, as long as they stopped handling the Crowley products, would discontinue until an arbitration awarded is handed down.

Exhibit GC-2.
Richard Keber, for Respondent—Cross.

Q. How would you know they would discontinue, Mr. Keber? A. I wouldn't know.

Q. Well, you said it. (176) A. Unless the shop stewards brought it to our attention.

Q. Would you know it because you told them to discontinue to handle Crowley's products? A. No, that is not so.

Q. How else could you say they would discontinue? A. I wouldn't know unless the shop steward or the members brought it to our attention.

Q. But you did make that flat statement, didn't you? A. What statement is that?

Q. That your members would not handle Crowley's products. A. In this letter, yes.

The Court: Now, Mr. Keber, you did say a while ago on your direct examination that as a result of these letters going to the shop stewards you expected your members not to handle Crowley's products in the absence of a specific order to the contrary by their employer.

The Witness: That is right, sir.

The Court: Well, now then this letter of April 1st you say flatly, "our members will not handle Crowley's milk or milk products," and you say nothing about an order from Thompson.

Mr. Parsonnet: May I respectfully suggest, sir—

Mr. Henderson: May I suggest I think this witness should answer the question.

(177) Mr. Parsonnet: This question is a question of argument, sir, and not facts.

The Court: If he can't answer the question because he finds a letter dictated by you let him say so.

Mr. Parsonnet: But the question you asked is not the kind of a thing he can answer, in that respect, if

your Honor please. If your Honor will review the question I believe you will find that to be so.

(Question read back.)

The Court: So do I understand that letter signed by you to Thompson meant that you expected your members not to handle Crowley's milk under any circumstances?

The Witness: I wouldn't say that, that it would mean under any circumstances, your Honor. I would would say that they should not handle it unless the employer instructed them, gave them specific instructions to handle it.

Mr. Parsonnet: May I amplify that point because I am guilty of having written the letter myself.

The Court: I suppose you might just as well because otherwise he has got to go on the stand at some later point and I won't have the threads drawn together.

Mr. Henderson: Very well, sir.

* * * * * *

(184) Q. Now, Mr. Keber, you testified that you had a conversation with the attorney for North Jersey Dairy, is that right? A. Yes.

Q. Was that attorney Elmer D. Goodwin? A. I wouldn't know. I have forgotten his name. I don't know.

Q. Can you tell when that conversation took place? A. I think it took place—I am not too sure about this—but I think it was around the last of March, the last day of March.

Q. Could it have been April 1st? A. It could have been. I am not too sure.

Q. Specifically did it take place before or after you received a letter from North Jersey? A. Why, it took place

before—excuse me now, I am a little bit twisted. You asked me about North Jersey?

Q. Yes. A. It was after the 1st of April when I received the call.

Q. Let's see. We are talking about the call to you from the attorney for North Jersey. A. I am quite sure it was after the 1st.

Q. It was after the 1st? (185) A. Yes.

Q. Now the letter from North Jersey which I believe is Exhibit D-2 or P-3—Exhibit D-2 is dated April 7, 1955, but I presume you received it a day or so later. A. That's right.

Q. Well, now, was your conversation with the lawyer before or after April 7th? A. I am quite sure it was before.

Q. Before? A. Yes.

Q. So that was the last personal conversation you had with any representative of North Jersey? A. That's right.

Q. And after the letter requesting arbitration came in?

Mr. Parsonnet: I object on the ground that the letter did not request arbitration. It suggested it.

Mr. Henderson: I accept the amendment.

Q. After the letter suggesting the arbitration came in you did not personally answer the letter? A. No, sir, I did not.

Q. And you didn't have any conversation with any representative of North Jersey about it? A. No, sir, I did not.

Q. And as far as you know your attorney did not? A. As far as I know he did not.

(186) Now, in your conversation with Mr. Goodwin you have testified what happened there. Didn't the attorney, Mr. Goodwin, tell you that the Union had instructed

his client's employees, that is North Jersey's employees, not to handle Crowley's mix? A. No, I don't believe that that is true.

Q. Didn't he tell you that his client would send the employees home if they didn't handle the mix? A. I don't believe that that is true.

Q. And didn't you answer to him that he couldn't send the employees home? A. That is absolutely not true.

Q. I see. And didn't you tell him in the course of that conversation that the men would not handle Crowley's products? A. That is definitely not true. I don't believe the man said more than ten words, the attorney, because I don't like to even engage in a conversation with attorneys over the telephone because they twist things around.

Q. I see.

The Court: What Goodwin was this, do you know?

The Witness: I don't even remember the man's name, your Honor, other than that he——

The Court: He was an out-of-town attorney or did he come from Newark or what?

The Witness: I don't know, your Honor. He said (187) he was the attorney for the North Jersey Dairy Land and I really don't know his name. He certainly must have mentioned his name, but I didn't get it and I didn't pay any attention to it.

Q. He called you? You didn't call him? A. That is right, sir.

Mr. Henderson: Your Honor, I believe that Mr. Parsonnet identified him in cross examination of Mr. Lang as Mr. Elmer O. Goodwin. Is that correct?

Mr. Parsonnet: I asked who E. O. G. was, the initials on this letter, and Mr. Lang gave the name. Frankly it's in the record, but I don't remember

what he gave. I did not know who E. O. G. was when I asked the question.

Mr. Henderson: I see.

Q. Now, Mr. Keber, you have testified that it is standard operating procedure under the Union practice that employees shall obey the orders of the boss when he tells them to do something, is that correct? A. That is right.

Q. Now, I believe you testified—correct me if I am wrong—that that derives primarily from the provisions in the contract that the employer—this is Section 19 (e) of the contract—that the employer may discharge an employee for direct refusal to obey orders unless such orders jeopardize life or health, is that correct? (188) A. That is correct.

Q. That is where the SOP is derived from. A. Where what is derived from?

Q. Well, what has been referred to here as the SOP, standard operating procedure, that is where this custom or this recognition by the Union that the employee must obey the orders of the boss, that is where that is derived from, that contract provision. A. Anything that is in the contract must be obeyed?

Q. Yes. A. Yes.

Q. Now that is not a specific statement that any employee must obey any order of an employer, is it? It is simply a statement that an employer may discharge the employee if the employee doesn't obey?

Mr. Parsonnet: I object. I think the contract speaks for itself on that point.

Mr. Henderson: Very well.

Q. Now I call your attention to Section 18(d) of the contract stating, "It shall not be a violation of the agree-

ment for members of the Union to refuse to handle material in the possession of the employer received from any other employer with whom Local 680 is directly engaged in a labor dispute."

Under that provision is it your contention that the (189) contract authorizes your men not to handle Crowley's products? A. Why, ordinarily I would say yes, but our people have been instructed over a number of years that they must obey the employer's instructions unless it jeopardizes life or health.

Q. But with respect to this contract would you say this contract actually authorizes the employees to refuse to handle— A. I would say yes until an arbitrator decides against it, either one way or the other.

Q. Would you say the employer would be justified under the contract—would you say the employer would be justified under the contract if he discharged an employee for refusing to handle Crowley's products? A. Yes, he could.

Q. He could discharge? A. That is right—I don't know whether it would stand up before an arbitrator but I guess he could.

The Court: The question is not whether he physically could discharge but whether you would think that he was lawfully justified in discharging. Isn't that the question?

Mr. Henderson: Yes, sir, that is what I meant.

The Witness: I would say that he was not lawfully justified in discharging.

Q. Then you mean that section, the so-called "hot cargo" clause we are talking about now limits or changes section 19(e) about the employer being able to fire an employee for a direct refusal of an order. (190) A. No, I

don't agree with you on that. An employer has a right to discharge an employee for any cause, and if we feel that the discharge was unjust we would request arbitration, and whatever the arbitrator decided would be final and binding on both parties. Personally I would say no, that he has no right to discharge him.

Q. If he has no right to discharge him—I don't want to lead at this point—but if he has no right to discharge, that means Section 19(e) is not applicable, isn' that right?

Mr. Parsonnet: It seems to me we are now getting in a question of legal interpretation of a contract, and it seems to me that is not proper cross examination or proper examination of the witness even if it were on direct or cross. It will be up to the Court after receiving argument of counsel to determine the legalities of the contract, and I submit that getting opinion evidence from this witness is not helpful to the Court, nor is it permissible under the rules of evidence.

Mr. Henderson: I am pursuing this line of examination which in any case I have about finished because Mr. Parsonnet inquired as to the effect of Section 19(e) from this witness. However, I have finished with this line of examination.

Mr. Parsonnet: May I suggest I didn't inquire as to the effect. I ascribed to 19(e) the cause of the basic rule in the Union which requires all employees to obey orders.

The Court: Well, we have been sort of mixing our facts and law this morning in a pot pourri. I don't suppose we had best continue to do so any longer than necessary.

Mr. Henderson: I think I have explored that point as far as profitable anyway.

Exhibit GC-2.
Richard Keber, for Respondent—Cross.

Q. Now, Mr. Keber, you testified that this standard operating procedure, this custom we have been talking about, was discussed at shop steward's meetings and at general membership meetings, is that right? A. It always is, yes, sir.

Q. That is part of the regular order of business? A. Well, not part of it but in the order of business it comes up quite occasionally.

Q. Now, I believe you also testified that there were no specific meetings, no specific instructions given to shop stewards or to membership generally with respect to Crowley's, is that right, other than these letters we are talking about? A. That is right, sir.

Q. The subject of Crowley didn't come up at any Union meeting? A. The subject of Crowley's didn't come up?

Q. Didn't come up at any Union meeting? A. Oh yes.

Q. Well, at those meetings did you give any in- (192) structions as to what the men should do? A. No instructions other than that we were going to conduct a campaign to ask our employers to discontinue handling their products.

Mr. Parsonnet: May I ask that we fix the date of those meetings? I think there may be some misunderstanding unless that is fixed.

Mr. Henderson: I am talking about membership meetings and meetings of the shop stewards.

Mr. Parsonnet: When?

Q. When did these meetings occur? A. We have a regular membership meeting once a month.

Q. At what monthly meeting did you discuss the Crowley situation? A. Probably at the February meeting.

Q. Probably at the February meeting after you sent your letter of March 9th. Did you communicate any in-

structions to any stewards? A. No, sir, only that one that happened in the North Jersey Dairy Land when we found out that the shop steward there gave direct orders to members working there not to handle the product.

Q. You never countermanded your letter of March 9th, did you? A. I never what?

(193) Q. You never took it back, your letter of March 9th, to the shop stewards? A. No, no.

Q. You never cancelled it? A. No.

Q. So it stands as your instructions today, isn't that right? A. The letter stands, whatever is in the letter stands. If you are referring to the letter I sent I am sorry that I didn't word it that way when I should have said, "As per contract," but it is still all right. I sent it but that is what it meant. The next time I will see to it that it is worded that way.

Mr. Henderson: Maybe we won't have a case next time but now we have this case.

Q. Now you have testified that you didn't communicate with any steward in any way except you gave the business agent at one shop instructions to communicate with the shop steward at Sunrise? A. No, I never talked with him.

Q. After Mr. Adlerberg had called to your attention the situation at Sunrise did you remonstrate with the shop steward that he wasn't following instructions? A. No, sir, I never talked with him.

Q. I see. You didn't bring to his attention any error that he might have committed in instructing his members not (194) to handle Crowley's products? A. As far as I know he committed no error and I did not bring anything to his attention.

Q. So that you never took any action to correct any action of the shop steward at Sunrise? A. No, sir.

Exhibit GC-2.
Richard Keber, for Respondent—Cross.

Q. Did you ever take any action to correct the error of the shop steward at International? A. Oh yes.

The Court: What?
The Witness: Yes, I did.

Q. Who is the shop steward there? A. Frank Ellias.

Q. I am talking about International. A. Oh, International? Charlie Shuta. No, I didn't bring nothing to his attention.

Q. After your conversation with Mr. Blum you didn't take any action with respect to Mr. Shuta? A. No, sir, I did not.

Q. Did you know that the members of your Union generally were not handling Crowley's products? A. Did I know what?

Q. Did you know that the members of your Union generally were not handling Crowley's products? A. You mean since the letter went out since April 1st?

(195) Q. Since April 1st. A. Well, I hope not.

Q. Did you know? A. I assumed that most of them were not handling it but I did feel that some of it was coming in through the back door.

Q. Mr. Keber, maybe I didn't make myself clear. I want to know whether you had actual knowledge that these men were not handling Crowley's products? A. Yes.

The Court: Did the stewards report to you, is that it?

The Witness: No, not a single steward reported to me. In fact in some cases the employer told us that they would not handle it until this thing here was straightened out somehow.

Q. How many employers told you that? A. Well, I would say, oh, two or three.

Exhibit GC-2.
Richard Keber, for Respondent—Cross.

Q. Other than International, North Jersey, Sunrise? A. That is right, sir.

Q. So that those employees did call you up and tell you— A. Not a single employee called me up.

Q. Employers? A. No, this was in conversation while I visited their branches.

Q. Mr. Keber, you testified that there was a meeting held before you started picketing at which you decided you would picket, is that right? A. That's right.

(196) Q. Who was at that meeting? A. Representatives from our International and from the various local unions who handled dairy products throughout the Eastern Seaboard.

Q. Was Local 338 represented? A. Yes, they were.

Mr. Parsonnet: Just a moment. I object to any inquiry into this meeting unless the witness is made the witness of petitioner. If you will recall——

The Court: You mean it is not proper cross examination.

Mr. Henderson: He has testified there was such a meeting and the purpose for which it was held.

Mr. Parsonnet: Your Honor will recall I asked whether or not there was a meeting and he said yes, and I said as a result of such a meeting what did you do, and there was no discussion whatever as to what happened at that meeting.

The Court: I suppose it is cross examination to find out why he did what he did after the meeting.

Mr. Parsonnet: It seems to me that that why has been explained by Mr. Keber's reference to the past dispute.

The Court: Well, a fortiori it is cross examination.

Exhibit GC-2.
Richard Keber, for Respondent—Re-direct—Re-cross.

Q. Mr. Keber, you say that Local 338 was represented there? A. Yes, sir.

Q. Or were there any discussions at the meeting of
(197) common action against Crowley? A. Oh, yes.

Q. Was there discussion of action by Local 338? A. I don't know anything about 338. I know what I did at that meeting.

Q. Was there discussion at the meeting of action by Local 338 is what I asked you? A. I don't remember anything about Local 338.

The Court: I suppose it was a sort of general understanding that Crowley was not particularly friendly and that you were all going to do what you legally could.

The Witness: Legally, yes, sir, that is correct.

Mr. Henderson: No further questions.

Mr. Parsonnet: I have just two questions.

Re-direct examination by Mr. Parsonnet:

Q. During Mr. Adlerberg's telephone conversation with you did he tell you that his men had refused to obey any orders? A. No, sir, he did not.

Q. Did Mr. Blum in his telephone conversation? A. No, sir, he did not.

Q. Had any information come to you in any manner that any of the employees of Sunrise or International had refused in any way to obey orders? A. They did not.

Mr. Parsonnet: That is all.

(193) *Re-cross examination by Mr. Henderson:*

Q. At the time you talked to Mr. Adlerberg, Mr. Keber, did you know that an employee of Sunrise had refused to pack cheese when he had been ordered to do so by the plant

superintendent under the instructions of the company president?

Mr. Parsonnet: I object, if your Honor pleases. There is no such testimony in the record.

Mr. Henderson: I think there is such testimony. The employee in question was John Quinn. The refusal occurred on Saturday, April 2nd. He refused to pack the cheese until he had secured instructions from his shop steward. The next day his shop steward graciously gave consent on condition that Sunrise not receive any more cheese from Crowley.

The Court: I do remember that Adlerberg said he unpacked some cheese himself. I can't be sure of exactly what was testified as to the reason for that.

Mr. Parsonnet: May I call this to your Honor's attention? I made a very strong mental note of that. Mr. Adlerberg testified he had handled this cheese himself but he did not testify why he had handled the cheese. It was merely storing it away, and there was no testimony of Mr. Adlerberg at all as to why he did so. Now with respect to reference made by Mr. Henderson just now as to Mr. Grenci's testimony he is correct. There is testimony by Mr. Grenci that Quinn had not packaged the cheese when Grenci asked him (199) to, but when Grenci mentioned it to Del Vecchio, the shop steward, Del Vecchio spoke to Quinn and Quinn then proceeded to pack the cheese.

The Court: My notes show that Grenci did testify that he, Adlerberg, told him, Grenci, to tell employees to pack the Crowley cheese, that he, Grenci, told the employee to pack the cheese. The employee wouldn't pack until he got word from Del Vecchio,

and that Del Vecchio later stepped into the picture and the cheese was packed.

Mr. Parsonnet: Correct, sir.

Mr. Henderson: The cheese was packed, your Honor, but on condition that no more of Crowley's products would be handled.

Mr. Parsonnet: That was not testified to.

Mr. Henderson: My recollection was that it was, but of course that would have to be a matter of consulting the record.

(Testimony read back at request of the Court.)

Mr. Parsonnet: I will withdraw the objection, if your Honor please. You will recall that at the time of that testimony I objected because there was no showing of authorization.

The Court: Then they recalled Adlerberg and put Grenci on.

Mr. Henderson: Is there an answer to the question?

(200) A. I don't recall, no.

Mr. Henderson: No further questions.

ISAAC VEBANG, called by respondent, was sworn and testified as follows:

Direct examination by Mr. Parsonnet:

Q. Mr. Vebang, you are an employee of Thompson Dairy? A. Right, sir.

Q. You are shop steward of the Union? A. Yes, sir.

Q. What is your job? A. I am a routeman.

Q. How long have you been shop steward of the Union? A. I would say about ten years.

Exhibit GC-2.
Isaac Vebang, for Respondent—Direct.

Q. What are the instructions of the Union to the shop stewards with respect to obedience to orders of employers? A. That we should always obey the orders and if we think that they are wrong and if we think that they are wrong and don't abide with the contract we should call the Union up for further information of what to do. We should never refuse an order.

Q. Do you know whether those instructions were given—how did you hear those instructions from the officers of the Union? A. Well, we heard them at meetings and it is a standing order, a standing procedure that we should obey orders.

(201) Q. What meetings are they? A. Monthly meetings.

Q. Membership meetings? A. Yes, sir, that's right, sir.

Q. Those are monthly membership meetings? A. That's right.

Q. At which all the members attend? A. That is right, sir.

Q. Do all of the members have copies of the contract? A. Yes, sir.

Q. Have you heard Mr. McGinley or Mr. Keber at a membership meeting refer to provisions that require them to obey the orders under pain of dismissal? A. Yes, sir.

Q. Shortly after March 9, 1955, did you receive a letter from the Union? A. I did.

Q. And that was this letter, P-1 and P-2, is that correct? A. That is right, sir.

Q. Now, I call your attention to the language in Exhibit P-2, reading "Please see to it that all members under your jurisdiction will abide by the enclosed letter."? What did you understand that to mean? A. Well, if the boss wouldn't ask us to handle Crowley's products, give us a direct order, that we would not handle it, (202) that we

wouldn't take it out. If the boss gave us a direct order then we would handle it.

Q. Then what would you do? A. I would call the Union.

Q. Would you handle the product? A. I would.

Q. What did you do with respect to the letter after you got it? A. The boss was in Florida on a vacation and the bookkeeper was in charge of the office and I spoke to him about it and he said, well, we only buy cheese from Crowley and wouldn't it be all right if we still bought some. I said I would rather you buy it from someone else, and if you don't want to make a decision until the boss comes back, keep on buying it and a couple of days before the deadline, April 1st, lay in a double order of it so you will hold it until the boss comes back. We expected him back April 1st, but we didn't know what day for sure.

Q. What did he say? A. He said he would do it.

Q. Do you know whether he did lay in a double order? A. That I don't know.

Q. Did you call your letter to the attention of any members of the Union in the employ of Thompson Dairy? A. No, sir.

(203) Q. You never called it to their attention at all? A. No, sir.

Q. Not to any of them? A. No, sir.

Q. What happened when Mr. Thompson got back? A. I spoke to him about it and I asked him as a favor if he would cooperate and buy cheese some other place.

Q. What did he say? A. He said he had tried out two or three different cheeses from other companies and he also told me that he was getting an order in on April 4th, if it was all right. I said sure, it's all right. I don't like to see you go without cheese, go ahead. He said, "Would you handle it?" I said, "We never told you we wouldn't handle it."

Q. Did you handle it? A. We did.

Q. There was an order of cheese that came in after April 1st? A. It came in on April 4th, I think—I'm quite sure it was on April 4th. It was on a Monday that it came in.

Q. You agreed to handle it and did handle it? A. That is right. I never told him we wouldn't handle any of his products. I asked him as a favor if he would buy it of another company.

Q. During all of this period did you mention this to (204) any of the employees? A. I may have mentioned it to some but I never issued an order for employees not to handle it or anything.

Q. And in fact even after April 1st you did handle the cheese? A. We did.

Q. Did you receive any instructions from the Union during the entire period of time from March 9th to the day that you were called to the Labor Relations Board to give your statement? A. No, sir.

Q. You received no instructions from the Union at all except that one letter? A. That one letter was the only instruction.

The Court: Well, did you have any conversations with any of them regardless of instructions?

Q. Did you have any conversations with any representative of the Union concerning the Crowley situation? A. No, sir.

Mr. Parsonnet: That's all.

Cross examination by Mr. Henderson:

Q. Mr. Vebang, you say you heard McGinley or Keber and I think you said McGinley or Keber, the president or the secretary-treasurer of the Union, refer at Union meet-

ings to this clause in the contract whereby an employer could (205) fire an employee if the employee didn't obey his orders. You say you heard one of them refer to that at a Union meeting. A. I think I have, I am not—yes, I imagine I have because they have been telling us we should always obey orders, something to that extent.

Q. Do you remember whether it was McGinley or Keber? A. That I can't.

Q. Do you remember what meeting it was at? A. There may be a meeting six or seven years ago even for all I know. I attend them all, once every month.

Q. Do you remember what they said about it? A. No, but I know they always stressed the point that we should obey the orders. That is all I can really tell you about it unless they endanger our life or health.

Q. Now, Mr. Vebang, you referred to your conversation with Mr. Thompson where you asked him as a favor not to handle Crowley's products. A. Yes.

Q. When did that meeting occur about? A. I think, I am not sure. It may have been Friday, the 2nd, Friday the 1st of April, or Saturday the 2nd of April.

The Court: Why did you ask him to do it as a favor?

The Witness: Because I felt by asking if he would do it to cooperate—I couldn't come up to the man, and (206) demand it. After all he is my boss so I asked if he would do us a favor, to cooperate with us, in that we had this dispute with Crowley, if he would buy his cheese from some other company. I felt the man was entitled to that. I should ask him as a favor. I didn't come up and demand it of him. I felt I didn't have the right to do it.

Exhibit GC-2.
Isaac Vebang, for Respondent—Cross.

The Court: You could say, "My dear sir, I have this letter that speaks of your contract. In the light of that don't you think you better stop."

The Witness: Well, your Honor, I may bring out to your attention that we are pretty friendly up there and we speak to each other by our first names. I call my boss Frank and all that and as a matter of fact by asking as a favor I thought I could accomplish more.

The Court: Soft soap him.

The Witness: That's about right. He asked me to do him favors and I figured this was a favor I was asking him.

Q. As a matter of fact, Mr. Vebang, didn't you when you spoke to him, didn't you say "They told me down there," meaning the union hall, "to come to you and ask you this"? A. Not outside of what the letter says, that I should see if he would cooperate with us, and with no orders from down below from Local 680.

Q. I am talking about what you said to him, didn't you tell him "They told me down below to ask you to discontinue (207) handling Crowley products" or words to that effect? A. I don't know the exact words I used but I asked if he would do us a favor to discontinue Crowley and buy somewhere else. I may have mentioned from 680 which the letter states. The letter is from Local 680.

The Court: When you were talking to him did you have the letter in your hand, or did you mention it to him?

The Witness: No, sir, I didn't have the letter in my hand, your Honor.

Q. Did you mention it to him? A. I mentioned that I received the letter.

The Court: Yes.

The Witness: I think I did. I don't know. I asked him if he had received the letter which he said he did. It was on his desk when he came back from Florida.

Q. Now you have not handled any Crowley products since about April 9th, have you? A. Not to my knowledge. I don't know if he got a shipment in. I think it was on the 4th or 5th that we handled that and I don't know how long that lasted, if it was up by the 9th or 10th, I don't know.

Q. Now you say you handled that but isn't it true that you handled it only after you had gotten a specific assurance from Mr. Thompson that he wouldn't order any more? A. No, sir. (208) He told me this is the last shipment, "Is it all right if I get it in?" I said, "I never did tell you that you couldn't take it, that we wouldn't handle it."

Q. It was after he told you, "This is the last shipment," that you did handle it? A. He told me it would be the last shipment he got in until this dispute is settled, he wouldn't buy any other. I didn't tell them—you are putting words in my mouth I think.

Q. I don't mean to. I am sorry. You testify to exactly what you said. A. It is perfectly all right, "get your cheese in, we'll gladly handle it for you and sell it to the best of our ability". And he said "This is the last shipment, I hope it's all right." I said, "It's all right with me. Bring it in we won't refuse to handle it. We won't see it spoil or anything."

The Court: What counsel means is didn't Thompson tell you that this was the last shipment he was going to get before you said O. K.?

The Witness: Mr. Thompson said this will be the last shipment. I didn't tell him this would have to be

the last shipment. He was the one that said that. I never mentioned anything about it having to be the last shipment before we would handle it.

Q. You had not told him it had to be the last shipment. (209) but you had asked him as a favor saying it came from the Union not to buy anything more from Crowley, isn't that right? A. I asked him for a favor, if he would buy cheese from some other company.

Q. Yes. A. I didn't set no deadline that this would have to be the last shipment or anything like that.

No, I understand that.

Mr. Henderson: No further questions.

Mr. Parsonnet: That is all.

CHARLES SHUTA, called by respondent, was sworn and testified as follows:

Direct examination by Mr. Parsonnet:

Q. Mr. Shuta, y . are employed by the International Milk Company? A. Yes, sir.

Q. In what capacity? A. Route salesman.

Q. And you are a shop steward of the Union? A. Yes, sir.

Q. How long have you been a shop steward? A. About thirteen and a half years.

Q. In your capacity as shop steward for International are you also shop steward for Town Talk? A. That is right, sir.

(210) Q. On or about March 10th, did you receive a letter from Local 680? A. Yes, sir.

Q. Will you look at Exhibit P-1 and P-2. Are those the letters that you received? A. Yes, sir.

Exhibit GC-2.
Charles Shuta, for Respondent—Direct.

Q. What did you do with that? A. Posted them on the bulletin board.

Q. What did you understand was intended to be conveyed to you by the letter, Exhibit P-2, the short letter addressed to you? A. I posted them on the bulletin board and——

Q. Now the letter says, "Please see to it that all members under your jurisdiction will abide by the enclosed letter." A. Yes, sir.

Q. What did that mean to you? A. That we had a contract with the company and that all members should abide with the orders.

Q. You have attended the union meetings in the past? A. Every one, every month.

Q. Are there any standing instructions to the stewards and members with regard to obeying orders of employers? A. Yes, sir.

Q. I didn't hear you. A. I said yes, sir.

(211) Q. What are the instructions? A. Take orders from management when they are right.

Q. And if you think they are wrong, what do you do? A. I call the local office and get orders from them.

Q. And what does an employee do in the meantime? Does he obey the order or not? A. He obeys the order.

Q. Now after you posted the notice on the bulletin board, what happened with respect to Crowley? A. He came in about on March 4th between the hours of 8:30 and 9 in the morning with the milk truck and I happened to be there at the time.

Q. Are you talking about March or April 4th? A. April 4th.

Q. Before that, Mr. Shuta, did you have any discussion with Mr. Blum? A. I don't recall it.

Exhibit GC-2.
Charles Shuta, for Respondent—Direct.

Q. Did you make a statement at the request of the National Labor Relations Board and sign this statement? A. I may have.

Q. Do you recall that you were over at the National Labor Realtions Board with me? A. Yes, sir.

Q. And you recall that one of their Examiners dictated a statement for you? (212) A. That is right, sir.

Q. And that thereafter you signed the statement? A. That's right.

Q. Now, do you recall any discussion that you had with Mr. Blum about ten or fifteen days after March 9th when you received the letter? A. Yes, sir.

Q. What was that discussion? A. He said that——

Q. Where was it first? A. In his office.

Q. I see. A. He asked me to come in his office and he says, "Charlie, what am I going to do? We have a contract with Crowley's Milk Company." I said, "Mr. Blum," I said, "I am sorry, we have a labor dispute right now. You got an order to that effect that was made to you." And I said, "I have one posted on the bulletin board and that is what I am going by." I said, "We have a contract too."

Q. Did he say anything about what he was going to do then? A. He did not say what he was going to do. He said he was going to get a shipment in. It came in about April 4th.

Q. I am still talking about the conversation in Mr. Blum's office. Did he say anything about wanting or not (213) wanting any trouble with the Union? A. Yes, he said he didn't want any trouble with the Union. He would go along with us and he would get in touch with the Union. He said he didn't want to have any trouble with the local.

Q. Now what happened on April 4th? A. On April 4th, between the hours of 8:30 and 9 o'clock in the morning Crowley's milk truck came in with a load of cream and

milk. I happened to be there and the fellow pulled in. I told the driver to hold the truck up, pull it up to the front of the garage so he wouldn't hold up the drivers on the platform. He said, "What was the matter?" I said "You know we have a labor dispute," I says, "your company had an order issued to them by mail." He said—well, he referred me to Mr. Coyle, the salesman who was following the truck into the plant, and Mr. Coyle asked me what was the matter, and I said, "You know what is the matter," I said, "the deadline was April 1st." I says, "We refuse to handle your merchandise." So he wanted to know where the superintendent was and I referred him to the warehouse which is a half a block away from the plant. So he talked to the superintendent of the warehouse and it seems as though he wanted the superintendent to unload the truck. The superintendent and Mr. Coyle came in with me into the plant and they were talking. So the superintendent says to me, (214) "What do you want me to do, unload the truck?" I said that was "up to you, Mr. Middleton, you can do what you like."

Q. Then what happened? A. They went in the office, Mr. Coyle and Mr. Middleton and the superintendent and the president, Mr. Blum. They were in the office talking. What went on there I do not know. I wasn't there present.

Q. You were in for a short time, were you not? A. After they had their discussion.

Q. Then what happened? A. He asked me——

Q. Who asked you? A. Mr. Blum asked me in the office, he says, "Is there anything that we can do?" I said, I wouldn't know. The only thing is you have a contract here, and I said, "You have a letter to this effect and that is all I am going by." He said we have a contract. I said I am sorry and I walked out of the office.

Q. Did Mr. Blum give you any instructions at all to handle the merchandise? A. No, sir, he did not.

Exhibit GC-2.
Charles Shuta, for Respondent—Cross.

Q. Did Mr. Middleton? A. No, sir.

Q. Did anyone give you any instructions, to you or to any of the employees of the company, to handle the merchandise? (215) A. No, sir, he did not. The truck stayed in there at least an hour and a half.

Q. And no one was instructed to handle the mechandise? A. No, sir, nobody would have refused to handle it if we did get the instructions.

Q. If those instructions had been given? A. We would have unloaded the truck.

Q. Now, did you receive any instructions or communications by word of mouth or by telephone or by letter from the Union from the time that you received this letter P-2 until the time you appeared with me at the National Labor Relations Board? A. No, sir, I didn't. That is the only order that I got, that was that letter and that is what I went by which I think I was within the law.

Mr. Parsonnet: That is all.

Cross examination by Mr. Henderson:

Q. Mr. Shuta, about these Union meetings where there was dicussion of obeying the boss's orders, can you refer to a particular meeting where that was discussed? A. The boss's orders, that was—you said obey the boss's orders?

Q. Yes. You testified, Mr. Shuta, that your instructions as shop steward which you heard at Union meetings were that members of the Union should obey what their employer (216) told them to do. A. That is right.

Q. What Union meetings were they given to you at? A. Practically all meetings. Each one has it in their contract. Each member has a contract, which states it in there.

Q. Yes, but I am talking about discussion at the Union meetings. A. It was discussed at least once a month.

Exhibit GC-2.
Charles Shuta, for Respondent—Cross.

Q. You mean that every time you have a Union meeting this was discussed? A. That is right, practically.

Q. Do you remember any particular person who said anything about it? A. About obeying orders of the boss?

Q. About obeying the boss's orders. A. The president of the Union.

Q. What did he say about it? Do you remember the words he used? A. To obey orders which they put in the contract when it don't jeopardize their life or health.

Q. Do you remember how he put in? A. What is that, sir.

Q. Do you remember how the president put it when he was discussing it? (217) A. I don't remember, so many things were brought up before that.

Q. How long ago was it that he was discussing it? A. Say a couple of months ago. I think it was February or March.

Q. Did he ever say it in connection with Crowley's? A. No, sir, never at any time was it mentioned.

Q. There was never any discussion of Crowley at all? A. Only that we had a labor dispute with the Crowley Company, which we had.

Q. That was called to your attention, wasn't it? A. What was that?

Q. That was called to your attention, wasn't it? A. That's right.

Q. Now in this meeting of April 4th, didn't Mr. Coyle ask you what would happen if the company insisted on delivery of Crowley's milk? A. He asked me?

Q. Didn't he ask you that? A. He didn't ask me.

Q. Didn't you say that you would boycott it? A. I did not. He did say I was jeopardizing my job if I wouldn't accept it. I said I am sorry. I told him. I said we have a contract with you which we have a labor dispute and that

is all I am going by. I did mention that (218) at that time.

Q. Now you refused to let Berardi back the truck up for delivery. A. I didn't refuse, sir. I told him, "Pull it up, because we had other dealers loading the trucks at the platform—just pull it up."

Q. Didn't you tell him he couldn't deliver? A. I did not. I said—I told him to pull the truck up out of the way and he referred me to this salesman which they say was Mr. Coyle. He introduced me afterwards.

Q. I see. Did you tell Mr. Coyle he couldn't deliver? A. I did not, sir.

Q. You told him to get the truck out of the way? A. Just pull it up out of the way in front of the garage, which was in the plant for an hour and a half. I didn't refuse to unload it—until he seen the superintendent which he did. I didn't make any attempt to unload it at any time. If they had asked me I would, sir.

Q. If Mr. Coyle or Mr. Berardi had asked you to unload the truck you would have done so? A. Yes, sir.

Q. Either one? A. Yes, sir.

Q. Why would you have unloaded it if they asked you? A. Who would ask me, sir?

(219) Q. Mr. Coyle or Mr. Berardi.

Mr. Henderson: I want this to be clear. Coyle and Berardi are Crowley's employees. Frank Berardi is a driver of the truck of Crowley.

The Witness: Yes, I would take orders from management, sir.

Q. Well, now that we understand who Coyle and Berardi are, didn't the driver of Crowley's truck or didn't the salesman who was with him ask you what you would do if the company insisted on delivery of Crowley milk? A. If

the company insisted on me letting the truck pass in, is that what you mean, sir?

Q. Yes. A. Yes.

Q. Didn't they ask you? A. If they asked me I would have the men unload it, yes, sir.

Q. Now that's not what I meant. Didn't either Coyle or Berardi ask you at that time what you would do if that happened? A. No, sir. No, sir, they did not.

Q. When you were talking to them did you refer to the letter that was posted on the bulletin board? A. Yes, sir. He acted as though he never saw it or heard of it, but I showed him where it was and he went up and read it.

(220) Q. Did you say that was the reason why you wouldn't unload the truck? A. That's right, that we have a contract with the Union, with the company, and we are living up to the order.

Q. Now when you were talking to Mr. Blum didn't he ask you if you had instructed the men not to handle Crowley's products? A. Did he ask me?

Q. Yes, in his office. A. He did not.

Q. I am talking about the meeting on April 4th when the Crowley truck was there and Mr. Blum asked you to come into his office. Mr. Coyle was there and Mr. Blum was there and maybe Mr. Codile, I don't know, and they asked you to come in, and didn't Mr. Blum then ask you if you had ordered the employees not to handle Crowley products? A. I did not. If he wanted the stuff——

Q. Just a moment. I am asking you if Mr. Blum asked you that? A. They did not.

Q. He did not. So you did not reply to him that you were doing it under instructions of the Union? A. That is right, sir.

Q. The only instructions you received from the Union were that letter? (221) A. That's right, sir.

Exhibit GC-2.

Q. And it was because of that letter you wouldn't unload? A. That's right.

Mr. Henderson: That's all.

Mr. Parsonnet: That is all. I think it has been clarified, has it not, if your Honor please, that the answer to the question "If Berardi or Coyle asked you to unload you would have'—he corrected his statement on that, did he not?

The Court: In other words, he was at that time thinking that they were Blum employees.

Mr. Parsonnet: That is right.

Mr. Henderson: I think I must have confused the witness. I am sure his testimony was to the effect that if a Crowley employee asked him to unload he would not unload.

Mr. Parsonnet: That is correct.

The Court: Do we have a short witness?

Mr. Parsonnet: Not one that can finish in five minutes.

The Court: All right, recess until 2.

(Luncheon recess.)

* * * * * *

(239) Richard Keber, recalled:

Direct examination by Mr. Parsonnet:

Q. Mr. Keber, during the early part of the dispute in 1948 when the strike was in progress and picketing was undertaken, did you communicate with the employers of your members at that time with respect to the handling of Crowley products?

Mr. Henderson: At this time I would like to make a formal objection to this entire line of questioning as irrelevant.

Exhibit GC-2.
Richard Keber, for Respondent, Recalled—Direct.

The Court: I suppose it is impossible for this Court at this time to determine that question. We must receive it and then disregard it if on considering your later arguments it appears to be irrelevant.

A. Yes, I think we did.

Q. Did you make any request of them? A. We requested them not to handle the products.

(240) Q. Did you issue instructions to members in written form?

The Court: Who is this you asked not to handle the products?

The Witness: The companies with whom Crowley was dealing that we had contracts with.

Q. Do you remember an incident at the Borden-Castidian Company? If you don't say so. I have not attempted to refresh your recollection. A. I don't quite remember it; no.

Q. Do you remember an incident with respect to Rockwood Dairy? A. No, I don't. If you were to bring part of it to my attention I probably would remember it.

Q. Do you remember the name of the shop steward that you had in Castidian Dairy at the time 1948? A. Joseph Madley.

Q. Do you recall whether he undertook on his own to stop any of the Crowley products from coming into the plant? A. I believe he did.

Q. Did you issue any printed instructions to members—may I show you a part of the Congressional Record, page 25, do you recognize these instructions to members? A. Yes, I now remember them.

Q. Do you recall what you did with this? Did you (241) have such things printed? A. Yes, we did.

Exhibit GC-2.
Richard Keber, for Respondent, Recalled—Direct.

Q. What did you do with the printed sheets? A. We distributed them.

Q. To whom? A. To everybody we thought had something to do with Crowley products.

Q. You mean your members? A. Our members.

Mr. Parsonnet: If your Honor pleases, this instruction to the membership has been identified. It's part of the record. Perhaps it would be better for me to read it into the record. It is dated March 4, 1958, entitled "Instructions to Membership.

"As you know there is a strike of our membership against Crowley Milk Company of Paterson.

It is most important that you observe these instructions to the letter and carry them out fully:

1. Do not stop working for your employer or refuse to handle any products that you are requested to handle.

2. When you are carrying the signs——"

The Court: That by the way is the very thing which is lacking in P-1 and P-2.

Mr. Parsonnet: Except as was supplied by the testimony of the witnesses so far that it is now a standing (242) order.

The Court: I say it is lacking in writing.

Mr. Parsonnet: Yes, it is lacking in the written documents but I think it is supplied by oral testimony. Further evidence of that will be forthcoming.

"2. When you are carrying a sign in front of any store or other establishment selling Crowley's milk, and when one of our members comes to deliver milk or other products step aside and let him make his delivery without feeling that he is crossing a picket line.

Exhibit GC-2.
Richard Keber, for Respondent, Recalled—Direct.

"3. Don't ask anyone not to enter any store or make any deliveries. Don't even speak to them. Let everyone use his own judgment and conscience.

"4. Don't threaten your employer with any stoppage of work, or with picketing or with any other threat. Your employer has agreed not to help any other employer who is waging a fight against us, and we hope he will, on his own accord, keep this agreement." Signed, Milk Drivers and Dairy Employees Local 680, by Lawrence McGinley, president, Richard Keber, Business Agent, John H. Webster, Secretary-Treasurer.

The Court: You see, Mr. Parsonnet, the members of your Union are not lawyers. They were milk hands. They understood what is placed before them.

Mr. Parsonnet: Yes, sir.

(243) The Court: They don't go back in their memories to understand what are parts of contracts that have been signed months ago.

Mr. Parsonnet: May I call your Honor's attention to the fact that the stewards are fairly well trained in their duties..

The Court: The stewards, yes.

Mr. Parsonnet: The evidence is in with respect to one so far and we are charged with only four cases. It is stated in the testimony of Crowley's representatives that there were 22 companies that dropped Crowley, but they have been able to find only four which they were even willing to present to your Honor as evidence.

The Court: Well, you see the reason why the 22 dropped was not because your employees fully understood this unexpressed term in the contract, but because the employers di'n't insist on overriding

the Union contract and complying with the Crowley contract.

Mr. Parsonnet: Now we have these four cases and look what happened. In one case Thompson there was an actual delivery and handling of the product after April 1st, the deadline, that the Union fixed. There was no refusal to hand ; the product.

The Court: I should not have interrupted you because I am persuading you to start an argument.

(244) Mr. Parsonnet: I understand that, sir. I am attempting to show that what was in writing in that case is now the fixed procedure of the Union and it was along that line——

The Court: Yes, it may have been perfectly clear in this man's mind here. It may perchance have been clear in the mind of the shop steward. Query, whether it was clear in the mind of Tom, Dick and Harry, the milk handlers, the members.

Mr. Parsonnet: All I can say with respect to that is this, that it was sufficiently clear in the Thompson case to prevent him from refusing to handle the product.

Mr. Henderson: May I call your Honor's attention to the fact that in the Thompson case the handling was after specific assurance from the employer that he would not order any more Crowley milk.

Mr. Parsonnet: That was denied by the witness himself.

Mr. Henderson: That was not denied by the witness. May I also call your Honor's attention to the fact that if we are arguing the evidence that there has not been a single incident shown here where the employer ordered the worker to do the work and where the worker did it.

Exhibit GC-2.
Delfort Del Vecchio, for Respondent—Direct.

Mr. Parsonnet: The point is we are the defendants here. The obligation is on the part of the petitioner to (245) show that we have violated—we have not gone to the other 18 cases to ask them. We are here to answer charges. They are attempting to put the burden of proof on us which I submit does not belong upon us.

I think, sir, that that is all the testimony that is needed in this case to establish the general procedure in the earlier case, and I therefore excuse Mr. Keber, unless you have any questions.

Mr. Henderson: No questions.

DELFORT DEL VECCHIO, called by respondent, was sworn and testified as follows:

Direct examination by Mr. Parsonnet:

Q. Mr. Del Vecchio, you are employed by Sunrise Dairy? A. Yes, sir.

Q. You are a steward in the union? A. Yes, sir.

Q. And for how long? A. About seven years.

Q. And up to April 5th what was your job with the company? A. As route salesman.

Q. You have since changed so you are route salesman only two days a week, is that correct? A. Yes, sir.

Q. Did you shortly after March 9th receive a letter from the Union? (246) A. I did, sir.

Q. What did you do with that letter? A. I read it and I just kept it in the car.

Exhibit GC-2.
Delfort Del Vecchio, for Respondent—Direct.

Q. Did you post it? A. No, sir.

The Court: You read it and what?

A. I kept it in my automobile.

Mr. Parsonnet: He did not post it.

Q. Did you tell any of the employees of the company about the letter? A. I did. I told the two cooler men at the time.

Q. The two who? A. The two cooler men, the men who worked in the cooler who would accept any products that came in from outside.

Q. Who were they? A. Paul Tressani and Harold Roberts.

Q. What did you tell them? A. I told them I had received a letter from the Union, that we were in a labor dispute with Crowley's milk products or the Crowley Company and that we were advised not to accept any of their products till further notice.

Q. Did you tell them anything else? A. I also told them that they were not to refuse any direct orders from their employers.

Q. Did you inform the National Labor Relations Board (247) that you had so informed your people? A. I did.

Q. You made a sworn statement including that statement, did you not? A. Yes, I did.

Q. So that the only people you told about this letter were Tressani and Roberts? A. Yes, sir.

Q. And you did tell them that if the boss ordered them to handle the products they should do so? A. Yes, sir.

Q. During the week prior to April 1st did you have any conversation with Mr. Harvey? A. Yes, I did. In the latter part of March I spoke to Mr. Harvey in his office and I asked him if he had received a letter from the local ad-

vising that we were in a dispute with Crowley's milk company and he said he had and I said I would appreciate it if you would go along with this letter and discontinue accepting products from Crowley's.

Q. What did he say? A. He said I will speak to Mr. Adlerberg, he said, and I am sure he will go along with it or words to that effect.

Q. Meaning what? A. Meaning after he spoke to Mr. Adlerberg that he felt that he would discontinue using the products until some future time.

(248) Mr. Henderson: I move to strike that last. I think the statement would speak for itself.

The Witness: Excuse me. I do recall, I did say that he would refuse Crowley's products or the Union may take some future action and by that the only action I ever knew that has been taken has been arbitration.

Q. Did he say anything about complying with the letter? A. He said he felt it would be complied with, that was the impression that was left with me at the time.

Q. Now on April 1st were you at the plant? A. No, sir, I was off.

Q. Did anybody tell you that a Crowley truck had been there? A. No, sir.

Q. Do you know that there was an attempt to make a delivery on April 1st? A. I didn't know that until I came to work on the second day.

Q. Who told you of it? A. Mr. Grenci himself.

Q. What did he tell you? A. He told me that a shipment from Crowley of Crowley's products had come in but that he did not accept it.

Q. He is the manager of the plant? A. Yes, sir.

Q. Did he tell you anything else?

(249) Mr. Henderson: I object to this, your Honor. This I don't think is binding on the Board and I believe it's hearsay.

The Court: I suppose it is to be taken as affecting perchan e the credibility of Grenci personally, is that it?

Mr. Parsonnet: Mr. Grenci testified on behalf of the Board and this affects the credibility of his testimony, and not only that, sir, but he is the plant manager and one who might give orders.

The Court: On either or both counts I suppose it is receivable.

Q. Did he tell you however that the product had been delivered again or anything of that sort? A. Yes, he did. He told me that Mr. Adlerberg had signed for the product and it had been delivered.

Q. Did he tell you that anybody had on April 1st refused to perform any duties? A. No, sir, he did not.

Q. You did speak to him between 1 and 2 o'clock on April 2nd, is that correct? A. Yes, sir.

Q. Did he tell you anything about anybody not handling the product on April 2nd? A. He did mention that he had asked John Quinn to package the cheese.

(250) Q. And what did he say about it? A. And he said as of yet he had not done it and I said I would speak to him immediately.

Q. And what— A. But first I had——

Q. Just a moment. Did you say to Grenci what you would tell Quinn? A. Pardon me. I told Joe I would speak to him right away.

The Court: Who is Joe?

The Witness: That is the manager, Mr. Grenci—

Mr. Parsonnet: I am sorry, I didn't hear you.

A. That was Mr. Grenci, the manager.

Exhibit GC-2.
Delfort Del Vecchio, for Respondent—Direct.

Q. What did you say you would tell him? A. I told Mr. Grenci I would tell John Quinn to pack that cheese immediately, but before I did tell him I did go upstairs with my credit sheet, my returns rather, and I believe it was up there that I spoke to Mr. Harvey and he said, "I am sorry the way it turned out," he said, "but there will be no more future deliveries from Crowley's." And at the same time I told him I was going right down and tell John Quinn to package the cheese.

Q. Did you say anything about "on that condition," or anything of that sort? A. I did. I said under those conditions, I said, being you are the—the company is decent enough to cooperate with us, (251) I in turn will tell John Quinn to pack this cheese because there is no sense of having it go to waste, as long as it has been accepted.

Q. Did you make any reference to that condition when you talked to Mr. Grenci? A. I did the same thing, sir.

The Court: You did tell Grenci that because they wouldn't take more Crowley cheese that you would therefore have it packaged?

The Witness: I did, sir.

Q. When did you first learn that they were going to discontinue using the Crowley product? A. I first heard it from——

Q. I mean on that day. A. From Joe Grenci.

Q. Did Grenci say they were going to discontinue the— A. Yes, and then I heard it from Mr. Harvey.

Q. And did you thereafter talk to Quinn? A. I did, sir. I went into——

Q. Pardon me one moment. Was Quinn working that day? A. Yes, sir.

Q. Did you go in and speak to him? A. I went into the packing room where they pack cheese and I told him to go ahead and package it and he said he would.

Exhibit GC-2.
Delfort Del Vecchio, for Respondent—Direct.

Q. Had you ever told Quinn about the letter that you had (252) received from the Union? A. No, sir, I never did.

Q. Had you ever given him instructions not to pack any of Crowley's cheese after April 1st? A. No, sir, I didn't.

The Court: Didn't Quinn know there was a situation with Crowley?

The Witness: He did, sir, but I didn't tell him. Word evidently got around.

The Court: The grapevine I suppose.

The Witness: Yes, sir.

Q. The only two you told about it were Tressani and Roberts? A. Yes.

Q. And you gave them instructions that if they were ordered they were not to disobey orders? A. At the time I felt that was the end of the matter after I received the letter. I felt there would be no more to this matter and I never said anything to any of the men about it, and I just disregarded it more or less.

Q. And thereafter before April 1st you spoke to Mr. Harvey? A. Yes.

Q. And he told you also that the order from Crowley would be discontinued? (253) A. He told me he was very sure when I told Mr. Adlerberg about it it would be discontinued.

Q. And in talking about it on April 2nd what did he say about Adlerberg? A. That Sunrise had discontinued with Crowley and were getting their cheese from dairy farms.

Q. Did he say anything about his feeling about it? A. No, he just told me he was sorry that things did happen. That's the way it happened.

Q. At any time between March 9th and the day you appeared with me over at the Labor Relations Board did you receive any instructions or communications from Mr. Kober

or any other representative of the Union concerning Crowley's? A. No, sir, I never did.

Q. Do all of your members have copies of the Union contract? A. We all did have copies, sir. I think they still have them.

Q. At least when the contract was prepared they did? A. Yes.

Q. Were they delivered to you? A. Yes, sir.

Q. You had enough for all members? A. I did.

Q. You saw to it that everyone had a copy? (254) A. I did, yes, sir.

Q. Now suppose—let me ask you this: What would you have done if Grenci had come over to you and told you that Quinn had refused to obey his orders and hadn't mentioned that they were discontinuing business with Crowley, what orders would you have given Quinn? A. I would have told Quinn to go ahead and pack the cheese.

Q. And suppose Harvey had not told you that Crowley was—that they were discontinuing business with Crowley's, but had told you that Quinn was disobeying orders, what would you have done? A. Then I would have called up the local and gotten further instructions from them.

Q. What would you have done with Quinn in the meantime? A. If Harvey had given instructions to pack the cheese immediately I would have told Quinn to pack that cheese.

Q. Now you have been at meetings in the past of the Union for seven years you say? A. Yes, sir.

Q. And repeatedly the Union has advised the men never to disobey any direct orders from its employers. They have said that on many occasions. Mr. Keber has at meetings and so has Mr. McGinley and—pardon me—at one time or another all of the men have attended Union meetings and I am sure they have all heard that remark.

(255) Mr. Parsonnet: I believe that is all.

Exhibit GC-2.
Delfort Del Vecchio, for Respondent—Cross.

Cross examination by Mr. Henderson:

Q. Mr. Del Vecchio, you have testified that if Mr. Grenci or Mr. Harvey ordered you to pack cheese you would have packaged it—or let me correct that. If they had ordered Quinn to pack the cheese you would have told Quinn to go ahead and pack it, is that right? A. I certainly would have.

Q. Even without the condition that you actually got—without the condition that no more Crowley's cheese would be bought? A. I would, yes, sir, that is a direct order.

Q. But the facts are, aren't they, Mr. Del Vecchio, that you had received a commitment from Grenci that no more Crowley cheese would be delivered, is that right? A. Yes, sir.

Q. And you said, "on that condition I will tell Quinn to pack it," isn't that right? A. I believe I did.

Mr. Parsonnet: I object to that.

Mr. Henderson: He so testified.

Mr. Parsonnet: I don't think——

Mr. Henderson: I think the witness might be allowed to testify on his own recollection. I asked him a question.

(256) Mr. Parsonnet: You are putting words right in his mouth. I think it's improper to put words in his mouth.

The Court: This is cross examination.

(Question read back.)

The Witness: I said that meaning that it would be on that condition or any condition at all, meaning when the plant manager—or when anyone was asked to do anything by any part of management it would be done, because we have discussed in the past it is a strict advice from the Union that we should never

fail to follow the advice that the company hands down, their orders rather.

Q. Now you say you never gave any instructions to John Quinn—pardon me—prior to April 2nd you had given no orders to John Quinn about handling Crowley products, is that right? A. Prior to the deadline I had not given any instructions to anyone but two men. Those are the only two I had spoken to regarding the entire incident.

Q. Could you give me any explanation for Mr. Quinn's statement to Mr. Coyle and Mr. Berardi that he couldn't accept the Crowley products because you told him not to? A. I don't think he meant I told him not to. He might have said one of the other men told him about it but I never did.

Q. Now this conversation that you had with Mr. Harvey prior to the deadline when you asked him not to handle (257) Crowley products, when you asked him that, did you testify that he said he would speak to Mr. Adlerberg? A. He did.

Q. Well, did you ever speak to Mr. Adlerberg? A. No, sir, I did not.

Q. Who is the president of the company? A. Mr. Adlerberg.

Q. Who determines policy on a matter like this? A. Well, frankly either Mr. Harvey or Mr. Adlerberg, but Mr. Adlerberg is not always around.

Q. But in the event since Mr. Harvey was going to talk to Mr. Adlerberg—withdraw that question.

Did you tell Harvey at this meeting that you had been instructed at a meeting to ask him not to handle Crowley's products? A. No, sir, I did not.

Q. Did you mention to him having just come from a meeting? A. Frankly I didn't go to the last meeting because my brother had come home from Japan and I wasn't there.

Exhibit GC-2.
Delfort Del Vecchio, for Respondent—Cross.

Q. There was a meeting? A. There was a meeting.

Q. Of shop stewards? A. No, just a regular monthly meeting of all members. That would be in February I presume that you are talking about.

Q. I am talking about March. (258) A. Yes. I didn't go to that meeting, so I don't know what transpired.

Q. When you talked to Quinn, what did you say to him? A. I just walked in. I said, "John, Joe Grenci asked you to package the cheese and I will tell you go ahead and package the cheese, and that is all I said," and he said, "Thank you."

Q. Did you mention anything about it being the last delivery the company was going to get from Crowley? A. To John Quinn?

Q. Yes. A. I don't think I did.

Q. Well, now, are you positive about that, Mr. Del Vecchio? A. Yes, because I just said, "Package the cheese, John," and I turned around and walked out and I went back upstairs.

Q. You made a statement to the Board in connection with this case, didn't you, Mr. Del Vecchio? A. I don't recall, if you would clarify me on it.

Q. Well, this is your signature? A. Yes, sir.

Q. Would you like to refresh your recollection with this statement. I call your attention particularly to paragraph numbered 6. A. (Witness reads.) It is very possible I did say that.

Q. Now, having refreshed your recollection, can you (259) now say whether or not you told John Quinn, "You can go ahead and package the cheese as this is the last delivery that the company is going to get from Crowley's"? A. I probably said this as a parting shot, I believe, as I was walking away.

Mr. Henderson: That is all.

Exhibit GC-2.
Delfort Del Vecchio, for Respondent—Re-direct.
Frank Ellias, for Respondent—Direct.

Re-direct examination by Mr. Parsonnet:

Q. It is a fact however that even if this were not the last delivery you would have told Quinn to go ahead? A. Absolutely.

Mr. Parsonnet: That is all.

FRANK ELLIAS, called for respondent, was sworn and testified as follows:

Direct examination by Mr. Parsonnet:

Q. Mr. Ellias, by whom are you employed? A. North Jersey Dairy Land.

Q. And are you a shop steward of the Union? A. Yes, sir.

Q. How long have you been a shop steward? A. Four five years, probably five.

Q. Have you attended most meetings of the Union in that period of time? A. No. Due to sickness in my family I have not.

Q. Have you attended some? A. Yes.

(260) Q. Have you attended any meetings at which instructions were given that the employers orders must be obeyed? A. Yes, sir, I was.

Q. And what were those instructions? A. The instructions were when your employer gives an order you are supposed to carry them out to the fullest unless, why it is a danger to your health or well being.

Q. That is included in the contract? A. That is included.

Q. Have all of your members got a copy of the contract? A. The have. They were mailed to me.

Exhibit GC-2.
Frank Ellias, for Respondent—Direct.

Q. Who gave those instructions? A. Who gave those instructions? Either Mr. Keber or Mr. McGinley.

Q. Or both? A. Or both, yes, sir.

Q. Have you heard them on more than one occasion? A. I certainly have.

Q. Now you received a copy of the union letter on March 9th? A. I did.

Q. What did you do with it? A. Well, I showed it to a couple of members at the plant and I put it in my pocket where it remained up until the 1st of April.

(261) Q. Did you talk to your employer about the letter? A. No, I did not.

Q. So that you did not know what was going to happen on Friday, the 1st of April? A. No, I did not know.

Q. What did happen on the 1st of April? A. On the 1st, Crowley's milk truck backed up to the plant about 8:30 in the morning, or around that time, 8:15 or 8:30, and he discharged his load of ice cream mix. And I from the back seen it and immediately went below to the ice cream man, George Machuelle who makes ice cream for North Jersey, and I spoke to him. I took out the slip of paper I got from the Union and I talked it over with him and I told him I wouldn't advise him to handle Crowley's products. And I told him to wait here until I got back. I was going across the street to call up the Union which I did. I went across the street and I called up the Union. There was nobody there at that hour of the morning, but I called up anyhow and I got no answer to my phone call.

Q. Then what did you do? A. I went back to the plant and I figured well, I got the letter. I took it upon myself, I told George not to handle Crowley's products.

Q. Did you speak to Mr. McCormack? A. Yes, that is who I spoke to.

Exhibit GC-2.
Frank Ellias, for Respondent—Direct.

(262) Q. Did you tell him these were orders that you had just gotten on the telephone? A. No, no, I don't believe I said that, sir.

Q. Had you spoken to anybody on the telephone at that time? A. No. They are not there until 9 o'clock, sir. This was about a quarter past 8 or half past 8.

Q. Did you later try to communicate with the Union? A. I would like to get something in, Mr. Parsonnet.

Q. Go ahead. A. When I did go across the street and I called the Union up, why there was nobody in the Union building at that time. I mean they come in at 9 o'clock. I knew that and I walked back across the street and I just don't remember what I said to Mr. McCormack. But I told him that George couldn't handle the ice cream mix.

Q. You told him George could not handle it? A. Could not handle it, no. I took it upon myself to say that.

Q. Did you later communicate with the Union? A. Yes, I did. I quit at 12:20, sir, and that is the end of my day and I communicated with the Union, but I still couldn't get Tony or Joe, our business manager, or anybody else on there. I got George I believe and I left word for him to tell Tony to come on down the next day, that I had a (263) dispute down there.

Q. George is who? A. Business——

Mr. Parsonnet: May I offer a stipulation that George Shernan is a member of the Union who works in the Union office without authority to make policy. Will you accept that? I have personal knowledge of that.

Mr. Henderson: On your statement, Mr. Parsonnet, of course.

Q. Now following the time when you quit at 12:20 was any ice cream mix being prepared? A. Yes, it was. They

started right after. The dispute only lasted an hour and they went right on with International ice cream mix and they made their ice cream.

Q. What happened the next day? A. Well, the following day Tony or Joe Iorio—I believe he came down and I forgot what time it was, 11:30 or 12 o'clock, something around there, and he proceeded to tell me how wrong I was and gave me a darned good balling out for what I done. I said I took it upon myself to do what I done. He really gave me the devil for that, and that I should know the Union laws. I told him I had not been attending too many meetings and he said that the Union law was that when an employer gives an order to an employee he is supposed to follow the order, no matter what, until somebody notifies the Union and they come (264) down and change it.

Q. I see. Were the orders that you had given on April 1st countermanded by either you or Tony? A. Well, I don't get that word, sir.

The Court: Were the orders changed?

The Witness: Oh, sure, I was told to let him handle Crowley's products, yes, sir, I was very much wrong.

Q. Thereafter have you handled Crowley's products? A. I don't believe, sir.

Q. But you did handle them on April 2nd? A. Yes, sir, they were processed, yes.

Q. Now according to the Union instructions if another shipment from Crowley came in today and your men was instructed to process it what would you do? A. Oh, they would have to handle it, sir, they would have to handle it.

Q. Would you do anything with respect to it other than telling them to? A. No, I was wrong in the first place. They would handle it, sir.

Exhibit GC-2.
Frank Ellias for Respondent—Cross.

Q. Would you notify the Union? A. Would I notify the Union what, sir?

Q. Would you notify the Union that Crowley's products were in? Would you notify the Union office that the company had accepted some of Crowley's products, some products from (265) Crowley? A. On the second, yes, sir.

Q. If they came in today you would tell your men to process it, wouldn't you? A. Yes, then I would notify the Union. Yes, sir.

Mr. Parsonnet: That is all.

Cross examination by Mr. Henderson:

Q. Mr. Ellias, was it Mr. McCormack or Mr. Lang you spoke to after returning from trying to call the Union? A. Will you talk a little louder? I got a little difficulty. One of my ears is completely out.

Q. Was it Mr. McCormack or Mr. Lang that you talked to that morning? A. It was Mr. McCormack.

Q. Mr. McCormack? A. Mr. McCormack was not there at the time I started for work. I met Mr. Lang going across the street when I made the first telephone call. I met him on the street.

Q. Was that coming back from the telephone call? A. No, that was going over—no, that was going over.

Q. What did you tell Mr. Lang? A. I don't remember telling Mr. Lang anything, sir. I said something. There was something said, sir, but it was only a passing fancy. I really don't know.

Q. Well, now, what did you tell Mr. McCormack? (266) A. Well, Mr. McCormack was down there at the time that I went down there. I just told him that I took the letter to mean that I had—that there a Union dispute between Crowley and whatnot, and they were convicted on a labor charge and I told him that George should not

handle the milk, the ice cream mix, on that account, until I find out from the local just what is what.

Q. Now, did you hear Mr. McCormack tell George Machuells to go home if he wouldn't handle Crowley's mix? A. Did I hear him tell him to go home?

Q. Yes. A. Yes, sir, I did.

Q. What did you say then to Mr. McCormack? A. I don't think I said anything. I got out of there as far as I could. When I gave my order to George, sir, I come right upstairs.

Q. Didn't you tell Mr. McCormack that in that case the Union had instructed you if that happened you were to bring George down to the Union headquarters? A. No. sir. I think you got that all balled up. No union ever told me that, no, sir.

Q. I'm not asking you whether the Union told you that. I am asking you whether you told McCormack that the Union had told you that. A. No, sir, I did not. I told George that upstairs. I (267) told George when he did come upstairs which was only a few minutes downstairs to sit on the platform until I find out what it's all about. I mean, I did not know this was coming up or anything else.

Q. After that did you have a conversation with Mr. Lang in his office? A. Will you let me explain, sir?

Q. Surely. A. I was called upstairs to Mr. Lang's office in the back room, but the two of them went out of the room and left me in the back room all by myself. I was there about a half an hour, when I stuck my head out and said, "Mr. Lang, can I go to work?" I mean a little restless and I went downstairs. Nobody said nothing to me, and that's exactly what happened. They were busy calling up their lawyers and this and that and the other thing, I don't know.

Q. Did you tell Mr. Lang that you had to take George Machuella—is it George Machuella? A. Something like that, yes.

Exhibit GC-2.
Frank Ellias, for Respondent—Cross.

Q. Did you tell Mr. Lang that you had to take George down to the Union headquarters because of Union orders? A. I don't remember saying anything like that because I had no Union orders. I didn't get them on the phone.

Q. You didn't tell Mr. Lang that then? A. I don't believe. I don't remember saying that, sir.

(268) Q. Well, did you or didn't you? A. I say, sir, again, if I don't remember, sir, I'm not evading your question, I just don't remember. There were a lot of things said. I mean, I didn't know this thing was coming up here and I don't believe I said this, sir.

Q. Did you have a conversation with Mr. Lang? A. I don't remember having any. I didn't talk about the letter or anything else to Mr. Lang, not that I can remember, sir.

Q. After Tony Iorio spoke to you on April 2nd, did you talk to Mr. Lang or Mr. McCormack about it? A. No. Everything was running along very smoothly then and it was all forgotten. Tony just gave me a good bawling out to let me know I was not to keep the man from working. It was forgotten then until this day.

Q. Well, you had said the wrong thing, you had been told you were wrong. Didn't you tell your employer about it? A. I did not, sir, no. I told George—George came upstairs and asked me what he was supposed to do the following morning when he came in. "You come in and go to work and don't refuse to handle nothing."

Q. Did you say "Don't refuse if you are told to handle it"? A. Well, you are never supposed to refuse to handle anything, (269) sir. You have got to call up and let them straighten it out by arbitration or however they do it. That is the usual policy, sir.

Mr. Henderson: No further questions.
Mr. Parsonnet: That is all.

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Exhibit GC-2.
Elmer O. Goodwin, for Petitioner—Direct.

(273) ELMER O. GOODWIN, called for petitioner, was sworn and testified as follows:

Direct examination by Mr. Henderson:

The Court: I think I should advise both counsel that this gentleman used to be one of our legal aids when I was practicing law 20-odd years ago.

Mr. Parsonnet: I would not in any way interfere with testimony on that basis at all, sir.

Q. Mr. Goodwin, you are an attorney and counsellor at law in Newark, is that correct? A. That is correct.

Q. And you were counsel for the North Jersey Dairy Land, Inc.? A. Yes, for the past 15 years.

Q. Mr. Goodwin, did you have a telephone conversation with Mr. Keber on April 1st? A. Yes, I believe it was he, he said it was he.

Q. Let me ask you, can you identify the date? A. Yes, it was April 1st past.

Q. Will you describe that conversation? A. I in response to a call which I had received from Mr. Lang that morning concerning the refusal of one of their employees to handle a Crowley ice cream mix, I called the Union office and asked for Mr. Keber. I do not believe he was there at the time. I left word for him to return my call. That is (274) the best of my recollection at this moment, and shortly thereafter, still in the morning I believe, Mr. Keber called me, and I explained to him that I represented the North Jersey Dairy Land, that they evidently were having some real difficulty up there, that they had earlier received communication with Crowley mix was taboo for some reason or other, that the shop steward, an employee, had told them that the man could not handle the mix, and I wondered what it was all about, that from what little I knew of the contract between the Union and my client and from what little I knew of the Crowley situation, I saw no basis

for it because as I understood it there was no jurisdictional dispute with Crowley at the moment.

Mr. Keber told me that I was mistaken, that there was a dispute, and I said, "Well, certainly we want this man to work. We have a load of stuff up there."

He said, "Well, the man cannot handle the Crowley mix." And I said, "What is the dispute?" And he said, "Well—" at that time he said, "I don't make it a practice of discussing matters with attorneys," he said.

"Mr. Parsonnet represents us, do you know him?" And I said yes, I do. And he said, "Would you call him and he can tell you whether or not there is a dispute. There have been violations on the part of Crowley there, they have been convicted of unfair labor practices and he (275). can give you the details," and that was the end of the conversation.

Q. Did you discuss with him any action by your client in the event that the man continued to refuse to handle the Crowley mix? A. Yes, I said to him that my people weren't going to let the man sit idle all day and that they said they would send him home, and he indicated to me that that could not be done.

Q. Do you recall his language in indicating that that could not be done? A. That would be very difficult. He said, "No," he said, "they have got to give him something to do," or some such words to that effect. "They cannot just send him home."

Q. Did Mr. Keber make any statement as to whether or not the employees and the North Jersey should or should not handle Crowley's mix?

Mr. Parsonnet: I object to that, if your Honor please.

The Court: He has already said that, hasn't he?

Mr. Parsonnet: I recognized that and I didn't have an opportunity to interpose an objection be-

cause it was not in response to a question, but it is not a question whether Mr. Keber told Mr. Goodwin as a representative of management that they could or could not handle it. The question is did he induce or encourage employees not to handle it. There is a very decided distinction there (276) that I wanted to call to your Honor's attention. Whatever he told Mr. Goodwin is not an indication that the employees were induced or encouraged to refuse to handle.

The Court: His words were as I took them down, "The men cannot handle the Crowley mix."

Mr. Parsonnet: That is right, sir.

The Court: Does that mean they were sick in bed?

Mr. Parsonnet: It means simply this, that in so far as our enforcement of the contract with the employer is concerned, we wanted to emphasize to the employer that they were not to handle, but as your Honor will recall in the Conway case if you read it, so far as a threat of a strike even—and this was not a threat of a strike—that is not sufficient in so far as an employer is concerned to justify a ruling of a violation. It must be the communication to the employee that he should violate orders, and that is not being shown by this question.

The Court: Well, as I understand it it was specifically admitted that this was encouragement to the men not to handle Crowley's products as distinguished specifically from a technical refusal.

Mr. Parsonnet: I am afraid I don't gather the point, sir. Are you referring to Ellias' testimony?

The Court: No, I am referring to what you yourself said. I understood you to say some time ago

that there was (277) no question but what O-1 and P-2 were an encouragement to the men.

Mr. Parsonnet: No, that was Mr. Henderson who said that. I did not state that in so far as I remember.

The Court: Well, I suppose the record will speak for itself.

Mr. Parsonnet: I want to clarify my position if I may at this point. I would say that this letter P-2 was a statement to the employees that absent an instruction from an employer, in the absence of a direct instruction from an employer, they were not to handle the product.

The Court: I quite understand that and that is exactly what I attempted to say. You said these letters were an encouragement to the men not to handle Crowley's products as distinguished from an encouragement to them to refuse to handle Crowley's products.

Mr. Parsonnet: I am sorry, I didn't understand your Honor.

The Court: Now, if you had an encouragement to the men not to handle Crowley's products then Keber says, "The men can't handle Crowley's mix," not because they were sick he said but because "they couldn't do it," that doesn't exactly mean that they were at liberty to do it or not. It means they cannot do it under orders.

Mr. Parsonnet: Except as I am trying to indicate (278) to your Honor that Keber's statement must be shown to have been communicated to the men and the mere statement to the employer to that effect is not such a communication.

The Court: All right, but we have an admitted encouragement to the men in general not to handle

the product as distinguished perhaps from a refusal.

Mr. Parsonnet: That is right, sir. Are you then overruling my objection at this point?

The Court: I thought the question was utterly unnecessary as the witness had already covered that point.

Mr. Henderson: No further questions.

Cross examination by Mr. Parsonnet:

Q. Mr. Goodwin, are you willing to state specifically that Mr. Keber said to you, "The men cannot handle Crowley's products"? A. Yes, he said they can't handle it, Mr. Goodwin. And I said, "What are we going to do with that man sitting up there. That is the product we have."

Q. You found the next day, did you not, that the product was being handled, did you not? A. No, I found the same day—and the reason I didn't call you was that they had gone out and gotten some other mix, so they could get some use out of this man for the rest of the day.

Q. Isn't it a fact that the following day they did handle the Crowley product? (279) A. I don't know.

Q. You don't dispute it? A. No, I don't dispute it.

Mr. Parsonnet: That is all.

Mr. Henderson: No further questions.

Your Honor, the petitioner has no further witnesses.

The Court: Both sides rest.

Mr. Parsonnet: Yes.

Mr. Henderson: Yes.

The Court: There is always something to be thankful for. Now I understand that you gentlemen are going to let me have these briefs of yours by Friday, that will help a lot.

* * * * * *

Exhibit GC-3A.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680
OF NEW JERSEY
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers, A. F. of L.

535 High Street, Newark 2, New Jersey
Telephone MArket 2-4103 - 4104

Lawrence McGinley
President

Richard Keber
Sec'y-Treas.

March 9, 1955

Gentlemen:

This Local Union, Local 680, and also our sister Local, 338, are and have been for some years, directly engaged in a labor dispute with Crowley's Milk Co. In fact, on a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Co. was found by the Board and the Courts to have engaged in an unfair labor practice.

May we remind you of section 18 (d) of our contract, which reads as follows:

> "It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this agreement for the members of the union to refuse to make deliveries to or pickups from any employer with whom Local 338,

Exhibit GC-3A.

Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the union has given written notice to the Employer of the existence of such labor dispute."

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Co. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Co. and will discontinue making deliveries or pickups to or from this company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested, in order that we may avoid taking steps to enforce our contract.

Very truly yours,

RICHARD KEBER
Richard Keber
Secretary-Treasurer

RK:dd

Exhibit GC-3B.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680
OF NEW JERSEY
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers, A. F. of L.

535 High Street, Newark 2, New Jersey
Telephone MArket 2-4103 - 4104

Lawrence McGinley
President

Richard Keber
Sec'y-Treas.

March 9, 1955

Dear Sir and Brother:

Enclosed find copy of letter that was sent to your employer. Please see to it that all members under your jurisdiction will abide by the enclosed letter.

Fraternally yours,

RICHARD KEBER
Richard Keber
Secretary-Treasurer

RK:cb

Exhibit GC-3D.

JOSEPH THOMPSON & SONS
DAIRY PRODUCTS
293 East Mt. Pleasant Avenue
Livingston, N. J.

March 31, 1955

Milk Driver's and Dairy Employees
Local Union No. 680 of N. J.
International Brotherhood of Teamsters
Chauffers, Warehousemen & Helpers, A. F. of L.
535 High Street, Newark, New Jersey
Attention: Richard Keber

Gentlemen:

We are in receipt of your letter of March 9, 1955 which states that Locals 680 and 338 are directly engaged in a labor dispute with Crowley's Milk Co. The letter further requires us to discontinue receipt of any materials of Crowley's Milk Co. and to continue to cease dealing with this company as long as the labor dispute lasts.

Your letter of March 9 quotes Section 18(d) of our contract.

After receipt of your letter we contacted Crowley's Milk Company and were advised by them that there was no labor dispute pending between them and Locals 338, 584, 602, 607 or 680. Additionally, we talked with NLRB officials in N. Y. C. and were advised that they have no matter pending involving Crowley's Milk Company and the above named locals.

Our attorney advises us that if we comply with your request to cease dealing with Crowley's Milk Co. we may be engaged in an unlawful activity. He advises that he has doubt as to the validity of contract clause 18(d) because it

contemplates a secondary boycott forbidden by the Taft-Hartley Law and may involve violation of the Anti-Trust laws as well.

As you know we have supplied Crowley's products to our customers for many years. If this supply is stopped we may lose customers and suffer serious financial loss.

Under the circumstances, therefore, we request that this matter be submitted promptly to arbitration pursuant to Section 23 of our contract. Pending the decision of the arbitrator we request that your letter notice of March 9, 1955, above referred to, be withdrawn and that the members of your local in our employ be instructed to continue work despite our continued handling of Crowley Milk Co. Products.

Very truly yours,

JOS. THOMPSON & SONS
By FRANK G. THOMPSON
Manager

Exhibit GC-3E.

April 1, 1955

Thompson's Dairy
293 Mt. Pleasant Avenue
Livingston, New Jersey

Gentlemen:

This acknowledges your letter of March 31, 1955. We can only conclude that your delay in answering our communication of March 9, 1955, until the very day when our program was to go into effect is an evidence of bad faith. Had you, immediately or shortly after receiving our letter, suggested arbitration, we would have been only too glad to submit to arbitration, which could have taken place by this time.

Under the present circumstances, while we are willing to arbitrate the issue as provided by our contract, we must take the position that, pending the arbitration award, our members will strictly abide by section 18D of our contract. This section requires only 48 hours notice. We gave you over 20 days notice, and you took no action until the very last minute.

We advised you in our letters of March 9, 1955, and now repeat that this Local and Local 338 are in a labor dispute with Crowley's Milk Company. We are not surprised that this company denies it. Nor is it requisite that a matter be pending before the National Labor Relations Board in order that a labor dispute exist.

You are at liberty to request arbitration, and, if you do we shall engage in arbitration proceedings with you. Meanwhile, however, our members will not handle Crowley's Milk or milk products.

Very truly yours,

RICHARD KEBER,
Secretary-Treasurer

RK:cb

Exhibit GC-3F.

METROPOLITAN AREA AGREEMENT

OF THE

MILK DRIVERS AND DAIRY EMPLOYES

LOCAL 680

Affiliated with the

INTERNATIONAL BROTHERHOOD OF

TEAMSTERS, CHAUFFEURS,

WAREHOUSEMEN AND HELPERS

OF AMERICA

A. F. of L.

—o—

535 High Street, Newark, N. J.

Telephone - MArket 2-4103

EXPIRES OCTOBER 24, 1955

—o—

Re-Open Wages October 24, 1954

9. There shall be a Steward or Stewards, but not more than one for each craft per shift, at every Delivery Branch, Pasteurizing Plant, and Garage to see whether the members of the Union and the Employer live up to the provisions of this agreement and the rules of the Union, not inconsistent with this agreement, and to report any infraction of such provisions and rules to the Superintendent who shall promptly correct them. Such Steward or Stewards shall be selected by the Union and each shall be an employee of the place in which he is Steward. There shall be no discrimination against Stewards for Union activities. The Steward shall have no authority to alter, amend, violate or otherwise change any part of this agreement. The Steward shall report to the Business Agent of the Union, any violations of this agreement.

• • • • • •

Exhibit GC-3F.

18. (a) No strikes, lockouts, walkouts or slow-downs shall be ordered sanctioned or enforced by either party hereto against the other during the life of this Agreement, except as hereinafter provided.

(b) The Union shall not call, sanction or enforce any sympathetic strike of its members and the Employer shall not aid other companies in any fight that may be waged against the Union.

(c) It shall not be a violation of this Agreement or cause for discharge for any member of the Union to refuse to make deliveries or pickups of goods, to or from any customer or third party, if such customer or third person is directly involved in a controversy with any Union under the jurisdiction of the American Federation of Labor and if pickets are situated at the location where the delivery or pickup is to be made. If the customer or third person is not directly involved in a controversy with any Union under the jurisdiction of the American Federation of Labor and if pickets are situated at the location, the members of the Union shall make deliveries to or pickups from such customers or third person for at least 48 hours after the Union has discussed the situation with the Employer; if the Employer, any of its divisions, subsidiaries or affiliates are directly or indirectly involved in a controversy with any Union, the members of the Union shall make deliveries or pickups for at least 48 hours after the Union has discussed the situation with the Employer, thereafter it shall not be a violation of this Agreement for failure to make deliveries or pickups, but the Employer reserves any and all rights it may have, except any rights based on a contractual claim for such failure.

(d) It shall not be a violation of this Agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more that 48 hours after the Union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this Agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Employer of the existence of such labor dispute.

19. The Employer may discharge or dismiss any employee for good cause upon one week's notice or one week's pay in lieu of notice, except that the Employer shall have the right of summary dismissal or discharge upon any one of the following grounds:

(a) Dishonesty.

(b) Under influence of liquor or drugs, while on duty.

(c) Unauthorized persons on vehicles.

(d) Violation of local or State health code.

(e) Direct refusal to obey orders given by the proper party unless such orders jeopardize life or health.

(f) Book shortage of $50.00 or more.

(g) Willful destruction of property.

(h) Failure to report promptly and honestly accidents or personal injuries.

Exhibit GC-3G.

North Jersey Dairyland, Inc.
487 Chancellor Avenue
Irvington, N. J.

Telephone WAverly 3-4144

April 7, 1955

Local Union 680 of the Milk Drivers
and Dairy Employees Union
535 High Street
Newark, New Jersey

Gentlemen:

We write you with respect to your recent letter concerning an alleged labor dispute between you and Crowley Milk Company.

The products of Crowley Milk Company have met with our complete satisfaction and the satisfaction of our customers. You called our attention to our contract provisions and particularly Section 18 (d), and have asked that we no longer use Crowley's products.

As our attorney earlier related to you on the Telephone, we cannot find if there now exists a labor dispute between Crowley Milk Company and yourselves or any affiliated Local. We have also been informed that the National Labor Relations Board in New York City is without record of any labor dispute. In any event, our attorney advises us that no such dispute exists as would be contemplated by Section 18 (d) of our contract.

This all being so, we fail to see what right we have to refuse to receive and employ Crowley's products or what basis there exists for your members in our plant refusing to use the products.

Exhibit GC-3G.

If we were to immediately cease using them, we feel we would interfere without our products and our relationship with out customers and suffer loss that cannot be reconped.

It is our suggestion that you permit us to continue to use the products until the matter can be arbitrated. Will you please advise us if this can be arranged.

Very truly yours,

R. J. LANG
NORTH JERSEY DAIRYLAND, INC.
R. J. Lang, Pres.

Exhibit GC-9.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680
OF NEW JERSEY
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers, A. F. of L.

535 High Street, Newark 2, New Jersey
Telephone MArket 2-4103 - 4104

Lawrence McGinley
President

Richard Keber
Sec'y-Treas.

September 26, 1955

Gentlemen:

Re: *Crowley's Milk Co.*

Some of our employers have been informed by an unknown source that the labor dispute between this Union and Crowley's Milk Company is over. This information is false. The labor dispute still continues, regardless of the Company's attempt to deny it. The fact that neither the Labor Relations Board nor the company even attempted to prevent our picketing of the Company's branch in Paterson should make it clear that a labor dispute exists.

We repeat that the cooperation we have received from our employers has been wonderful. Once in a while, because of false information such as above indicated, one or two employers have called us to check the facts. In the great majority of cases they have disregarded this false information, knowing that we will inform them when our labor dispute is over.

For many years our Union has given every cooperation possible to our employers, and we have received, as we are entitled to do, similar cooperation from them. In fact, the

Exhibit GC-9.

very success of our periodic collective bargaining negotiations depends largely upon the mutual confidence developed between us. In view of this, we feel that our relationships have always been replete with mutual respect and confidence.

We are, therefore, sure that you will continue to cooperate with us and to comply with our contract by not handling Crowley's products. We assure you that we will notify you as soon as the dispute is over.

Very truly yours,

RICHARD KEBER
Richard Keber
Secretary-Treasurer

RK:dd

Local 680 Exhibit No. 1.

PARSONNET, WEITZMAN & ORANSKY
1060 Broad Street
Newark 2, N. J.

December 14, 1951

Charles T. Douds, Regional Director
National Labor Relations Board.
Second Region
2 Park Avenue
New York 16, N. Y.

Re: Crowley's Milk Co.
and Local 680, Int'l Bro.
of Teamsters, AFL
No: 2-CA-327

Dear Mr. Douds:

This will confirm our understanding that the General Counsel intends to move the Board to vacate the Order heretofore issued in the above matter on August 8, 1951, remanding this case to a trial examiner for further hearing.

Please be advised that the charging union, Local 680, I.B.T., AFL, joins in the motion to vacate the Board's Order of Remand.

It appears now that the lengthy delay in processing the case before the Board has resulted in the employees involved who were refused reinstatement, securing employment elsewhere, and they have all lost interest in further proceedings in this case. They have informed the union that they do not desire to cooperate or to testify or to have anything further to do with the proceedings.

In these circumstances, the union concludes that no useful purpose will be served in further hearing.

Very truly yours,

THOMAS L. PARSONNET
Thomas L. Parsonnet

TLP/jzm

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FILED
AUG 29 1957
JOHN T. FEY, Clerk

APPENDIX TO RESPONDENT'S BRIEF

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 412

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BATAVIA TIMES LAW PRINTERS
BATAVIA, N. Y.

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MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

and

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO.

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4. 6.55	Charge filed in Case No. 2-CC-333.
4. 8.55	First amended charge filed in Case No. 2-CC-333.
5.31.55	Second amended charge filed in Case No. 2-CC-333.
6. 9.55	Hearing opened in injunction proceeding before the U. S. District Court, District of New Jersey before Honorable Richard Hartshorne in the matter of *Douds v. Local 680, etc.*, Civil No. 496-55.
6.14.55	Hearing closed in injunction proceeding before the U. S. District Court, District of New Jersey before Honorable Richard Hartshorne in the matter of *Douds v. Local 680, etc.*, Civil No. 496-55.
6.17.55	Notice of hearing and complaint issued.
6.22.55	Order rescheduling hearing from July 11, 1955, to August 15, 1955, in Case No. 2-CC-333 issued by Regional Director.
6.28.55	Answer of Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL,[1] to complaint in Case No. 2-CC-333 sworn to.

[1] Petitioner before this Court and Respondent before the Board

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8. 4.55	Order rescheduling hearing from August 15, 1955, to September 19, 1955, in Case No. 2-CC-333 issued by Regional Director.
8.18.55	Charge filed in Case No. 2-CC-355.
9. 6.55	Order rescheduling hearing from September 19 to October 17, 1955, in Case No. 2-CC-333 issued by Regional Director.
9.20.55	Notice of hearing and complaint in Case No. 2-CC-355 issued by Regional Director.
10. 5.55	Answer of Milk Drivers and Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL[2] (petitioner herein) to complaint in Case No. 2-CC-355 dated.
10.12.55	Order consolidating cases and rescheduling hearing from October 17, 1955, to October 31, 1955, issued by Regional Director.
10.14.55	Amended complaint issued by Regional Director.
10.31.55	Hearing opened.
11.10.55	Hearing closed.
2.21.56	Trial Examiner's Intermediate Report and Recommended Order issued.
2.21.56	Order transferring cases to the Board.
3.26.56	Local No. 680's exceptions to the Intermediate Report and Recommended Order received.
3.28.56	Petitioner's exceptions to the Intermediate Report and Recommended Order received.
4. 2.56	General Counsel's exceptions to the Intermediate Report and Recommended Order received.
10.25.56	Decision and Order issued.

[2]Petitioner before this Court and Respondent before the Board.

Answer of the National Labor Relations Board to Petition to Review and Set Aside a Portion of an Order of the National Labor Relations Board.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. .....

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board, hereinafter called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), files its answer to the petition to review and set aside that portion of a Board order issued against Milk Drivers and Dairy Employees Local Union 338, etc., and the Board's request for enforcement thereof.

1. Answering the allegations contained in paragraphs 1, 2, and 3, the Board prays reference to the certified transcript of the entire record of the proceedings before the

Answer of the National Labor Relations Board to Petition to Review and Set Aside a Portion of an Order of the National Labor Relations Board.

Board, filed herewith, for a full and exact statement of the pleadings, evidence, rulings of the Trial Examiner, Intermediate Report, findings of fact, conclusions of law and order of the Board, and all other proceedings had in the said matter before the Board.

2. The Board denies each and every allegation of error contained in paragraph 4.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and pursuant to Section 10 (e) of the Act, respectfully requests this Honorable Court for enforcement of that portion of said order, dated October 25, 1956, issued against petitioner in the proceedings designated before the Board as Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-333; Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-355.

4. Pursuant to Section 10 (e) and (f) of the Act, the Board has filed a certified list with the Court which represents the transcript of the entire record in the proceedings before it.

WHEREFORE, the Board prays that the Court enter a decree denying the petition to review and set aside and

enforcing in full that portion of the order directed at petitioner.

/s/ STEPHEN LEONARD,
STEPHEN LEONARD,
Associate General Counsel,

NATIONAL LABOR RELATIONS BOARD.

Dated at Washington, D. C., this 10th day of January, 1957.

Answer of the National Labor Relations Board to Petition to Review and Set Aside a Portion of an Order of the National Labor Relations Board.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. .....

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board, hereinafter called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), files its answer to the petition to review and set aside that portion of a Board order issued against Milk Drivers and Dairy Employees Local Union No. 680, etc., and the Board's request for enforcement thereof.

1. Answering the allegations contained in paragraphs 1, 2, and 3, the Board prays reference to the certified transcript of the entire record of the proceedings before the

Board, filed herein, for a full and exact statement of the pleadings, evidence, rulings of the Trial Examiner, Intermediate Report, findings of fact, conclusions of law and order of the Board, and all other proceedings had in the said matter before the Board.

2. The Board denies each and every allegation of error contained in paragraph 4.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and pursuant to Section 10 (e) of the Act, respectfully requests this Honorable Court for enforcement of that portion of said order, dated October 25, 1956, issued against petitioner in the proceedings designated before the Board as Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-333; Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-355.

4. Pursuant to Section 10 (e) and (f) of the Act, the Board has filed a certified list with the Court which represents the transcript of the entire record in the proceedings before it.

WHEREFORE, the Board prays that the Court enter a decree denying the petition to review and set aside and

enforcing in full that portion of the order directed at petitioner.

/s/ STEPHEN LEONARD,
STEPHEN LEONARD,
Associate General Counsel,
NATIONAL LABOR RELATIONS BOARD.

Dated at W. shington, D. C., this 10th day of January, 1957.

Decision and Order.

On February 21, 1956, Trial Examiner Sidney L. Feiler issued his Intermediate Report in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner with the following modifications.

1. Respondents contend that the Regional Director improperly consolidated the cases herein. Consolidation is a matter for administrative discretion and is provided for in the Board's Rules and Regulations.[1] In the instant cases Respondents were alleged to have sought by unlawful conduct to secure recognition from the same employer and to cause other employers to cease doing business with that employer, the charging party in both cases. Furthermore, witnesses, such as Anderson, general counsel for the charging party, and Keber, secretary-treasurer of Local 680, testified concerning events relating to both cases. Nor have Respondents demonstrated that they have in any way been hindered in the presentation of their defenses or otherwise prejudiced by the consolidation. Accordingly, we reject Respondents' contention that the instant cases were improperly consolidated.[2]

2. For the reasons indicated in the Intermediate Report, we agree with the Trial Examiner that it has not been established that either Respondent participated in, or was otherwise responsible for, the conduct of the other found herein to constitute violations of Section 8 (b) (4) (A) and (B) of the Act. Accordingly, we shall dismiss the allegation contained in the amended complaint that in so violating the Act the Respondents acted jointly. We therefore find it unnecessary to determine whether, as Respondents contend, the allegation of joint responsibility contained in the amended complaint was insufficiently supported by the charges filed in these cases.

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[1] Section 102.33, Rules and Regulations of the National Labor Relations Board, Series 6, as amended.

[2] Cf. *Roadway Express, Inc.*, 108 NLRB 874, fn. 1; *N. L. R. B. v. United Mine Workers of America, District 31, et al.*, 198 F. 2d 389 (C. A. 4) 1952.

3. The General Counsel contends that the remedial orders recommended by the Trial Examiner should be broadened to prohibit each Respondent from attempting, through unlawful secondary pressures, to force Crowley's Milk Company, Inc., to recognize not only that Respondent but the other Respondent and any other labor organization: Activity having such an objective may, we believe, be reasonably anticipated on the part of Respondents in view of the evidence showing that in renewing their campaigns against Crowley's, Respondents were acting pursuant to a decision reached at a meeting of the Eastern Conference of Teamsters. That meeting was held for the purpose of discussing the Crowley case and was attended by representatives of the International Union and local unions handling dairy products throughout the Eastern Seaboard. For this reason we shall amend the orders recommended by the Trial Examiner in accordance with the General Counsel's request.

ORDER.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its officers, representatives, agents, assigns and successors, shall cease and desist from inducing and encouraging employees of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, or any other employer, to engage in

a strike or a concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 680, Local 338 or any other labor organization, as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

2. The Respondent Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its officers, representatives, agents, assigns and successors, shall cease and desist from engaging in and/or inducing and encouraging employees of Edward Greco, d/b/a Maple Grove Dairy, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 338, Local 680 or any other labor organization, as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. The Respondents shall take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at their respective business offices copies of the attached notices; Appendix A in the case of Local 680 and Appendix B in the case of Local 338.[3] Copies of said notices, to be furnished by the Regional Director for the Second Region, after being duly signed by official representatives of the Respondents, shall be posted by them immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

Local 680 shall also sign copies of Appendix A and return them to the Regional Director for posting at the premises of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons. Local 338 shall also sign a copy of Appendix B for posting at the premises of Edward Greco, d/b/a Maple Grove Dairy.

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that

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[3] In the event that this order is enforced by a decree of a United States Court of Appeals, these notices shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

the Respondents acted jointly in violating Section 8 (b) (4) (A) and (B) of the Act.

Dated, Washington, D. C., October 25, 1956.

BOYD LEEDOM, *Chairman.*
STEPHEN S. BEAN, *Member.*
(Seal) NATIONAL LABOR RELATIONS BOARD.

PHILIP RAY RODGERS, MEMBER, concurring:

I concur in the result reached herein by Chairman Leedom and Member Bean for the reasons set forth in my concurring opinions in *Local 1796, et al., (Sand Door & Ply Wood Co.)*, 113 NLRB 1210, and in *Local No. 886, et al., (American Iron Machine Works)*, 115 NLRB No. 121.

Dated, Washington, D. C.

PHILIP RAY RODGERS, *Member.*
NATIONAL LABOR RELATIONS BOARD.

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APPENDIX A

NOTICE TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

Appendix A attached to Decision and Order.

WE WILL NOT induce or encourage employees of INTERNATIONAL MILK COMPANY, SUNRISE DAIRIES, NORTH JERSEY DAIRYLAND, INC., and JOSEPH THOMPSON & SONS, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 680, Local 338, or any other labor organization, as the representative of any of its employees; unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO.

(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B attached to Decision and Order.

APPENDIX B

D-37

NOTICE TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT engage in and/or induce or encourage employees of EDWARD GRECO, d/b/a MAPLE GROVE DAIRY, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 338, Local 680, or any other labor organization as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO.

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by an other material.

Intermediate Report and Recommended Order.

STATEMENT OF THE CASE

Upon a charge and amended charges filed by Crowley's Milk Company, Inc., herein referred to as Crowley's, the General Counsel of the National Labor Relations Board[1] by the Regional Director for the Second Region (New York, New York), on June 17, 1955, issued a complaint against Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, herein referred to as Local 680, alleging that Local 680 had engaged in conduct violative of Section 8 (b) (4) (A) and (B) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 601, herein referred to as the Act. Copies of the charges, complaint and notice of hearing were served upon the parties to the proceedings.

With respect to unfair labor practices the complaint alleges in substance that from on or about March 9, 1955, Local 680, by its officers, agents and representatives, has engaged in, and, by requests, appeals, orders, directions, instructions and other means, has induced or encouraged the employees of certain named employer customers of Crowley's with whom Local 680 has collective bargaining

[1] The General Counsel and the attorney representing him at the hearing are referred to as the General Counsel. The National Labor Relations Board is referred to as the Board.

agreements, and the employees of other employers, to engage in strikes or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services for their employers, where an object or objects thereof was to force the secondary employers to cease dealing in the products of Crowley's and or forcing the secondary employers to cease doing business with Crowley's and/or forcing Crowley's to recognize or bargain with Local 680 as the exclusive collective bargaining representative of its employees, although Local 680 has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

Local 680, in its answer to this complaint, dated June 28, 1955, admits certain jurisdictional allegations, but denies the commission of any unfair labor practices.

Another complaint was issued by the Regional Director, on September 20, 1955, against Milk Drivers and Dairy Employees, Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO; herein referred to as Local 338, based upon a charge filed by Crowley's. With respect to unfair labor practices, this complaint alleges in substance that, from on or about April 1, 1955, Local 338, by its officers, agents, and representatives, has engaged in, and by picketing, requests, appeals, orders, directions, instructions and other means, has induced or encouraged the employees of Maple Grove Dairy, a customer of Crowley's, and the employees of other employers to engage in strikes or concerted refusals in the course of their employ-

ment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services for their employers, where an object or objects thereof was to force the secondary employers to cease dealing in the products of Crowley's and/or forcing the secondary employers to cease doing business with Crowley's and/or forcing Crowley's to recognize and bargain with Local 338 as the exclusive collective bargaining representative of its employees, although Local 338 has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

Local 338, in its answer to this complaint, dated October 5, 1955, admits certain jurisdictional allegations, but denies the commission of any unfair labor practices. It admits that Local 338 had been engaged in efforts to organize Crowley's employees and, in connection with such efforts has picketed in the vicinity of Crowley's plants. It further alleges that at all relevant times there has been in force a written collective bargaining agreement between Local 338 and Maple Grove wherein it is provided that employees covered by the contract shall not be required in the course of their employment to handle material received from any employer with whom that Local and other sister locals has a labor dispute, that Local 338 informed Maple Grove that it and Local 680 were engaged in a labor dispute with Crowley's and that members of Local 338 employed by Maple Grove were therefore not required in the course of their employment to handle products received from Crowley's. It is also alleged that at all times relevant it was not within the scope of employment of employees of Maple Grove to handle Crowley's products.

Intermediate Report and Recommended Order.

On October 12, 1955, the Regional Director consolidated the cases against Locals 680 and 338. An amended complaint was issued against both locals on October 14, 1955. This complaint incorporated the allegations contained in the separate complaints issued against each local and, in addition, alleged that these locals were jointly and severally responsible for all the alleged unfair labor practices. No answers were filed to this amended complaint; both locals contended that the consolidation of the cases was improper and that the allegation of joint responsibility was beyond the scope of the charges.

At the outset of the hearing, counsel for Local 338 objected to the consolidation and moved to sever on the ground that the order of consolidation was issued without prior notice to Local 338 or any opportunity to state its position or to learn what facts and circumstances were considered in connection with the order. He maintained this was a denial of due process. He also pointed out that whereas the original charge accused Local 338 of violations of the Act in connection with one employer, the amended complaint required it to prepare to defend itself on activities occurring in connection with the operations of 15 or 16 employers. Local 680 joined in the motion to sever. The General Counsel argued that the original order of consolidation was within the discretion of the Regional Director, pursuant to the Board's Rules and Regulations, and that the cases should remain consolidated in view of the allegations of the amended complaint that the Respondents acted jointly and severally. The motion to sever was denied.

Counsel for Local 680 then moved to dismiss the complaint on the ground that the complaint alleges that Locals 680 and 338 participated in certain joint action while none of the charges makes such an allegation. Local 338 joined in this motion. The motion was denied.

The motions to sever and to dismiss were renewed by the Respondents at the conclusion of the presentation of evidence. Decision was reserved. They are disposed of by the findings and conclusions herein.

Opportunity was also afforded for the filing of briefs and/or proposed findings of fact or conclusions of law or both. A memorandum was received from Local 338 and a brief from Crowley's.

Upon the entire record and from his observation of the witnesses the undersigned makes the following:

FINDINGS OF FACT

I. The Business of the Company

Crowley's Milk Company, Inc., is and has been at all times material hereto a New York corporation, having its principal office and place of business in Binghamton, New York, with other plants, places of business, warehouses, and other facilities at Paterson, New Jersey, Newburgh, New York, Middletown, New York, and Allentown, Pennsylvania. At all times here relevant it has been engaged at these plants, places of business, warehouses, and milk depots and receiving stations in the purchase, processing, manufacture, sale, distribution, and delivery of milk, cream, cheese, ice cream mix, and other milk products.

Crowley's, in the course and conduct of its business operations during the past 12-month period, which period is representative of all times material hereto, caused to be purchased, transferred and delivered to its above-mentioned plants and places of business located in the States of New York, New Jersey, and Pennsylvania, milk and other goods and materials valued in excess of $1,000,000, of which goods and materials valued in excess of $500,000 were transported to said plants and places of business in interstate commerce directly from States of the United States other than the States of New York, New Jersey, and Pennsylvania wherein said plants and places of business are located.

During the past year, Crowley's in the course and conduct of its business operations, caused to be processed, manufactured, sold and distributed at said plants and places of business products valued in excess of $1,000,000, of which products valued in excess of $500,000 were shipped from said plants and places of business in interstate commerce directly to States of the United States other than the States of New York, New Jersey, and Pennsylvania wherein said plants and places of business at which said products were manufactured are located.

The parties stipulated that at all times material Crowley's was and is engaged in commerce within the meaning of the Act and the undersigned, in accordance with prior decisions of the Board involving this Company,[2] so finds.

[2] 88 NLRB 1049, 40 NLRB 1280. Standards established by the Board for the assertion of jurisdiction in 8 (b) (4) (A) proceedings have been met. *(Local 11, United Brotherhood of Carpenters and Joiners, etc. (General Millwork Corporation)*, 113 NLRB No. 124).

II. The Labor Organizations Involved

Milk Drivers and Dairy Employees, Local Unions No. 680 and No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, of America, AFL-CIO, are labor organizations within the meaning of the Act.

III. The Unfair Labor Practices

A. *Background*

Preliminary Note

Prior to the issuance of the complaint against Local 680, the Reginal Director commenced proceedings for an injunction in the United States District Court for the District of New Jersey. A hearing was held on June 9, 10, and 14, 1955 before the Hon. Richard Hartshorne, D. J., at which oral testimony and exhibits were presented. The parties to the present proceeding stipulated that certain witnesses in the New Jersey proceeding, if called upon to testify in the present proceeding, would testify as indicated in portions of the New Jersey transcript which were received in evidence as an exhibit.

An injunction proceeding was also brought against Local 338 in the United States District Court for the Southern District of New York. This proceeding was referred to in statements of counsel and in stipulations in the present proceeding, but no part of the record was incorporated herein. The undersigned has based his findings on the pleadings and exhibits introduced in evidence (these exhibits included those in the New Jersey proceeding), certain oral testimony in the New Jersey proceedings, brief

oral testimony herein, stipulations by the parties, argument of counsel, and memoranda submitted.

With respect to the testimony in the New Jersey proceeding, the undersigned cautioned counsel that not having seen the witnesses he was in no position to resolve any conflicts in testimony. The General Counsel and counsel for Local 680 took the position that while there were some conflicts in testimony, these would not affect the issues to be resolved herein. They did not feel it necessary to introduce further testimony. The undersigned has used the New Jersey testimony to the extent that matters referred to were not in dispute.

Injunctions were denied in the New Jersey proceeding (133 F. Supp. 336 (D. C. N. J.), July 11, 1955); and in the New York proceeding (memorandum opinion by Hon. Sidney Sugarman, D. J., November 17, 1955).

Board decisions outline labor relations at Crowley's and organizational efforts of Locals 680 and 338.

As to Local 680, a decision involving it and Crowley's is reported in 88 NLRB 1049 (March 13, 1950). The following background material is set forth in that case: A labor organization, United Dairy Workers Association, was certified by the Board, in 1942, as exclusive bargaining agent for Crowley's production and maintenance employees at its Binghamton plant. In September 1945, a contract was made with the Newburgh, New York, local of the Association. In October 1945, the Association organized the Paterson, New Jersey, plant and contracts were thereafter effected with Crowley's. The three locals joined in negotiations with Crowley's, but separate contracts were executed with each local.

Intermediate Report and Recommended Order.

In January 1948, the Paterson local of the Association sent a letter to Crowley's expressing its readiness to enter into negotiations for a 1948 contract. In February, Local 680 notified Crowley's that it claimed to represent employees at the Paterson plant. It also filed with the Board a petition for an election and certification of representatives.

On July 1, 1948, Local 680 filed a charge against Crowley's alleging that it had engaged in unfair labor practices including an allegation that Crowley's, in violation of the Act, had failed to bargain collectively with it as the duly designated representative of employees in an appropriate unit at the Paterson plant.

Crowley's filed a charge against Local 680 alleging a violation of the boycott provisions of the Act. The Regional Director refused to issue a complaint on this charge and his ruling was upheld by the General Counsel on August 14, 1948.

The Board in September 1948 directed an election on the representation petition filed by Local 680 (79 NLRB 602). This election was not held because the request for an election was withdrawn.

The status of Local 680 as bargaining representative was considered in hearings on the unfair labor practice charge it had filed against Crowley's. On March 13, 1950, the Board issued its Decision and Order (88 NLRB 1049), in which it found that Crowley's had violated the Act by recognizing and entering into a contract with the Association while a question concerning representation of the Paterson employees was pending before the Board, and that a

strike of employees which was economic in its inception was converted into an unfair labor practice strike by Association recognition and the granting of a wage increase and a new contract. However, the Board dismissed the allegations of an unlawful refusal to bargain. It held that it had not been established that Crowley's failure to recognize the Union on its demand was in bad faith. It ordered the reinstatement of the strikers upon their application, the withdrawal of recognition of the Paterson local of the Association, and the posting of a notice.

On August 8, 1951, the Board remanded the case to permit the parties to adduce relevant testimony concerning the strikers' rights to reinstatement (95 NLRB 1023). Counsel for Local 680 first attempted to find the former strikers but, on December 14, 1951, wrote the Regional Director, in part, as follows:

> • • • It appears now that the lengthy delay in processing the case before the Board has resulted in the employees involved who were refused reinstatement, securing employment elsewhere, and they have all lost interest in further proceedings in this case. They have informed the union that they do not desire to cooperate or to testify or to have anything further to do with the proceedings.
>
> In these circumstances, the union concludes that no useful purpose will be served in further hearing.

Thereafter, Local 680 took no further part in the proceedings.

In its supplemental Decision and Order (102 NLRB 996) the Board found that only one of the strikers evinced any

interest in reinstatement with back pay. The orders of the Board were enforced (208 F. 2d 444 C. A. 3).

Local 338 first requested recognition from Crowley's in 1945. On November 17, 1950, it filed a petition for certification of representatives for a unit of employees at the Newburgh plant. The petition was dismissed by the Regional Director and his ruling was upheld by the Board on February 23, 1951.

Another petition was filed by Local 338 on February 27, 1951, for a unit at the Newburgh plant. This petition was dismissed by the Regional Director on November 4, 1952, for failure to cooperate in the investigation.

A charge alleging a discriminatory discharge of four employees at the Newburgh plant was filed by Local 338 on January 5, 1951. This charge was dismissed, administratively, on July 23, 1952, for insufficient evidence. This ruling was sustained on appeal to the General Counsel on October 2, 1952.

At the time of the hearing, Crowley's employees at its Binghamton plant following an earlier Board certification, were represented by the United Dairy Workers Association. Employees at the Newburgh and Middletown, New York, plants were represented by the Newburgh local of the Association. An organization called the Collective Bargaining Committee of Employees of Crowley's Milk Company, Inc., represents employees at the Paterson, New Jersey plant. Crowley's does not recognize or bargain collectively with any other labor organization except the three listed above.

B. *Current union activities at plant premises*

Richard Keber is secretary-treasurer of Local 680. He played a key part in current activities directed against Crowley's and gave detailed testimony at the New Jersey proceeding.

According to Keber, Local 680 stopped picketing Crowley's in 1949 after a year and a half of such efforts. One of the reasons for discontinuing the picketing, according to Keber, was the fact that the International organization was forming an Eastern Conference of Teamsters and Local 680 was advised that disputes such as the one it had with Crowley's would be handled better after that Conference was established.

The Eastern Conference was established and a meeting was held, at a date not fixed in the record, for the purpose of discussing the Crowley case. Representatives from the International and local unions who handled dairy products throughout the Eastern Seaboard, including representatives from Locals 338 and 680 attended. There was discussion of common action against Crowley's and agreement to take joint action. Local 680 went out on or about April 1, 1955, started picketing and is continuing to picket Crowley's Paterson, New Jersey, plant with signs reading, "Crowley's Milk Company unfair to Local 680." At approximately the same time Local 338 started picketing the Binghamton and Newburgh, New York, plants with signs reading, "Employees of Crowley's Milk Company, join Local 338."

C. *Activities at premises of secondary employers*

1. By Local 680

Local 680 and 58 employers in the business of milk handling and distributing are parties to a standard contract entitled, "Metropolitan Area Agreement of the Milk Drivers and Dairy Employes Local 680." The contract is here referred to as the Standard Milk Contract.

Local 680 and 19 employers engaged in the manufacture of ice cream are parties to a standard contract entitled, "Agreement, New York City, Northern New Jersey and Southern New York State Area-Wide Union Agreement in the Ice Cream Industry of the Ice Cream Drivers and Employees Union Local 680." The contract is referred to as the Standard Ice Cream Contract.

On March 9, 1955, Local 680 sent the following letter to all employers who were parties to the Standard Milk Contract:

> This Local Union, Local 680, and also our sister Local, 338, are and have been for some years, directly engaged in a labor dispute with Crowley's Milk Co. In fact, on a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Co. was found by the Board and the Courts to have engaged in an unfair labor practice.
>
> May we remind you of section 18 (d) of our contract, which reads as follows:
>
> > "It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any

employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this agreement for the members of the union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the union has given written notice to the Employer of the existence of such labor dispute."

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Co. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Co. and will discontinue making deliveries or pickups to or from this company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested, in order that we may avoid taking steps to enforce our contract.

An identical letter was sent to all employers who were parties to the Standard Ice Cream Contract except that it quoted Section 5 (d) of the Ice Cream Contract. This section refers to Locals 757, 338, and 680, but otherwise is identical in language with Section 18 (d) of the Milk Contract.

On the same day letters were dispatched to the employers, Local 680 sent copies of the letters to its approximately 100 stewards at the respective companies with a letter reading:

> Dear Sir and Brother:
>
> Enclosed find copy of letter that was sent to your employer. Please see to it that all members under your jurisdiction will abide by the enclosed letter.

This letter was the only general instruction given to all the stewards. It was stipulated that some of the shop stewards posted copies of the letters they received on the bulletin boards at their plants.

Keber testified that Local 680 has a president, Lawrence McGinley, a secretary-treasurer, Keber, two business agents, Albert Cooke and Anthony Iorio, and shop stewards. Keber testified that Local 680 contracts require that all stewards and other members obey orders. If they believe a contract is being violated, they can report the alleged infringement to the union office. They cannot, according to Keber, take independent action and have been so instructed.

As to the sentence in the letter sent the stewards: "Please see to it that all members under your jurisdiction will abide by the enclosed letter," Keber declared he meant that if the employer refused to cooperate, the stewards should communicate with Local 680 for further instructions. His testimony on this point in the New Jersey proceeding is as follows:

> The Witness: We meant that the shop steward who is the representative of our local union locally in each

branch in all disputes and controversies that arise in that particular branch or plant, they must first be discussed of course with the shop steward—we took it upon ourselves to feel that the employers would contact the shop stewards regarding our letter to them referring to the Crowley products. Our shop stewards because of our meetings and instructions to them know that when a letter like this is sent out that they are to do whatever they can to have an employer cooperate with the letter and if the employer refuses they then must of course call the union office for further instructions and in this particular case we have only had as far as I know four calls from the fifty some-odd companies where the employers did not exactly refuse to cooperate with the letter but called up and said that they had a certain problem because of the letter that we sent.

• • •

The Witness: It meant our shop stewards were to inform the rest of the employees and show them a copy of the letter that we sent to the employer requesting the employer to cooperate, to discontinue handling the product and if an employee was instructed directly, directly instructed by the employer to handle it, that they must handle it and immediately contact the Union office.

He also testified that after April 1 he expected all his members not to handle Crowley's products in the absence of a direct order from their employer. If an order were given, it was expected that the men would handle the shipment, but notify Local 680.

In a discussion between the Court and counsel in the New Jersey hearing, counsel for Local 680 stated that it was his position that the letter from Local 680 to its stewards "was a statement to the employees that absent an instruction from an employer, they were not to handle the product."

Keber testified that only four employers voiced any objection to the March 9 letter, International, Sunrise, Thompson, and North Jersey.

International Milk Company

International Milk Company and its subsidiary, Town Talk Ice Cream Company, were customers of Crowley's. International and Town Talk are under contractual obligation to Local 680. Charles Shuta is the shop steward of the Union for both concerns. After International and Town Talk received letters from the Local 680 asking for a cessation of business relations they found themselves in a dilemma in view of contractual obligations they also had with Crowley's. The concerns did not observe the April 1 deadline and received a shipment from Crowley's on April 4.

Albert Blum, president of both companies, when he went to plant premises on April 4, found a Crowley's truck on plant premises parked and not being unloaded. He was told that Charles Shuta, the Local 680 shop steward had told platform men not to unload the truck.[3] After Blum

[3] Shuta, according to William P. Coyle, a salesman for Crowley's, stopped a Crowley's truck at the International platform and told Coyle, who spoke with him, that on orders of Local 680 he would not allow Crowley's merchandise to be accepted and that if a delivery were made, there would be a boycott. Coyle reported this to Blum. The driver of the truck, Frank Berardi, testified Shuta prevented his making a delivery and told him there was a notice posted on the bulletin board stating the men were not to handle Crowley's products.

checked personally with Shuta and was informed by the latter that he had issued orders not to unload the truck on instructions from Local 680, he telephoned Keber and was told by Keber, according to Blum, that the instructions had come from the office of the Union.[4] Blum replied that the Crowley's goods would have to go back in view of those instructions. The shipment was returned and no further orders were placed with Crowley's. Blum's decision not to continue with Crowley's was as a result of the contract with Local 680 and his understanding of the instructions issued by it.

About a week prior to the April 4 incident Blum had had a conversation with Shuta in which he told Shuta that in view of contractual obligations he would let a shipment come to the plant after April 1 and see what happened. Shuta replied the shipment would not be unloaded. Blum acquiesced in the action of Local 680 and its members and at no time did he issue affirmative instructions to employees of International or Town Talk to handle Crowley's deliveries. Employees were expected to unload and handle all products as they arrived.

Keber maintained that Blum did not tell him the men were refusing to obey instructions.

Shuta testified that he posted the March 9 letter on the bulletin board of his company. He further testified that he understood the letter to mean, "That we had a contract with the Company and that all members should abide with

[4] Keber testified he told Blum that Local 680 had a dispute with Crowley's, that the letter of March 9 was official, and that the Union would insist on its contract rights. He denied that Blum told him that the men were refusing to obey instructions or that he said the men were instructed not to handle Crowley's goods.

the orders." However, he also stated that there were outstanding union instructions that all members should obey orders from their employers whether they considered them right or wrong.

His version of his conversation with Blum 10 or 15 days after the receipt of the letter is that Blum told him he was under contract to Crowley's but he, Shuta, pointed out that Blum also was under obligation to Local 680, in accordance with the posted letter. Blum said he did not want any trouble with the Union and would get in touch with it.

As to the April 4 attempt to make a delivery by a Crowley's driver, Shuta's version of the incident is as follows:

> Q. Now what happened on April 4th?
>
> A. On April 4th, between the hours of 8:30 and 9 o'clock in the morning Crowley's milk truck came in with a load of cream and milk. I happened to be there and the fellow pulled in. I told the driver to hold the truck up, pull it up to the front of the garage so he wouldn't hold up the drivers on the platform. He said, "What was the matter?" I said, "You know we have a labor dispute," I says, "your company had an order issued to them by mail." He said—well, he referred me to Mr. Coyle, the salesman who was following the truck into the plant, and Mr. Coyle asked me what was the matter, and I said, "You know what is the matter," I said, "the deadline was April 1st." I says, "We refuse to handle your merchandise." So he wanted to know where the superintendent was and I referred him to the warehouse which is a half a block away from the plant. So he talked to the superintendent of the

warehouse and it seems as though he wanted the superintendent to unload the truck. The superintendent and Mr. Coyle came in with me into the plant and they were talking. So the superintendent says to me, "What do you want me to do, unload the truck?" I said that was "up to you, Mr. Middleton, you can do what you like."

Q. Then what happened?

A. They went in the office, Mr. Coyle and Mr. Middleton and the superintendent and the president, Mr. Blum. They were in the office talking. What went on there I do not know. I wasn't there present.

Q. You were in for a short time, were you not?

A. After they had their discussion.

Q. Then what happened?

A. He asked me--

Q. Who asked you?

A. Mr. Blum asked me in the office, he says, "Is there anything that we can do?" I said, I wouldn't know. The only thing is you have a contract here, and I said, "You have a letter to this effect and that is all I am going by." He said we have a contract. I said I am sorry and I walked out of the office.

No affirmative orders were issued to employees to handle that delivery. Shuta testified he would not unload the truck because of the contents of the letter from Local 680.

Sunrise Dairies

Sunrise Dairies is a party to the Standard Milk Agreement. It has done business with Crowley's for over 20 years. The steward on the job is Belfort Del Vecchio. The company received the March 9 letter, but, according to Bo

Adlerbert, its president; the letter was disregarded. On Friday, April 1, Crowley's attempted to make a delivery at Sunrise. An employee, Roberts, refused to accept delivery, maintaining he had been instructed by the union steward not to handle Crowley's goods. Adlerbert had the Crowley's driver put the delivery, some tins of cottage cheese, on a conveyor and Adelbert took them off the conveyor at the other end and stored them.

Joseph Grenci is plant manager of the company. On Saturday, April [illegible] Adelbert instructed Grenci to [illegible]ckage the cheese delivered by Crowley's the preceding day. Grenci testified he instructed an employee, Quinn, to package the cheese. Quinn refused to do so claiming he would have to receive further instructions from the shop steward first. Grenci spoke with Del Vecchio, told him that future shipments from Crowley's were being stopped, but there was a problem with the cheese on hand. Del Vecchio replied that in view of the cooperation of the company the cheese could be packaged. This was done.

On April 4, after another employee's refusal to handle Crowley's goods, Adelbert telephoned Keber and asked him whether men at the plant had been instructed not to handle Crowley's products. Keber replied, according to Adelbert, "Yes, they are not supposed to touch the products of Crowley Milk Company." Adelbert said that he wanted to continue doing business with Crowley's, but Keber refused to revoke the instructions to the men and Adelbert stopped doing business with Crowley's because the men would not handle Crowley's products. No affirmative instructions were issued to the employees to handle those products.

Keber testified he told Adelbert that Local 680 had a labor dispute with Crowley's and expected his company to live up to its contract with the Union and not handle Crowley's products. He denied that the question of purported instructions by him to employees not to handle Crowley's products was discussed, that the shop steward or his instructions was disdussed, or that he was told the men were refusing to obey orders. He maintained that h would consider it a violation of contract by Sunrise for it to continue normal business relations with Crowley's.

Del Vecchio did not post the March 9 letter, but told two employees who worked in the cooler about it. He told them he had received a letter from the Union that there was a labor dispute with Crowley's and "we were advised not to accept any of their products until further notice." Del Vecchio also told them, according to his testimony they were not to refuse any direct orders. On April 2 Del Vecchio was told by Grenci, the plant manager, that a Crowley's shipment had not been accepted by him the previous day, but that Adlerbert had signed for the shipment of cheese. Grenci stated that he had asked employee Quinn to package the cheese, but the latter had not carried out the assignment. Del Vecchio promised to speak to Quinn immediately. On the way he met an office employee, Harvey, who told him: "I am sorry the way it turned out but there will be no future deliveries from Crowley's." Del Vecchio did testify that he told both Grenci and Harvey that since the company was cooperating with the Union he would tell Quinn to pack the cheese and did so. He denied telling Quinn about the letter or telling him not to pack Crowley's products.

Intermediate Report and Recommended Order.

North Jersey Dairyland, Inc.

North Jersey Dairyland, Inc., was a customer of Crowley's up to April 1, 1955. It also is a party to the Standard Milk Agreement. Frank Elias is the shop steward. On the morning of April 1, Rudolph Lang, president of the company, was told by Elias, according to the former, he was going to tell an ice cream maker at the plant not to handle Crowley's ice cream mix, pursuant to instructions he had received from the Union. When Lang was informed that the ice cream maker, George Machuella, was refusing to use the Crowley's mix, he issued instructions to send Machuella home because there was no other work for him. Elias went to Lang and told him that if Lang sent Machuella home, he, Elias, would have to take Machuella to union headquarters, according to instructions from the Union. Lang could not spare Elias and also run the risk of paying him for time away from the job. He obtained some other mix, kept the men working. He discontinued purchasing from Crowley's because of the refusal of his employees to handle Crowley's products after April 2, when there was a delivery received from Crowley's.

Lang, on April 7, 1955, wrote a letter to Local 680 in which he stated, in substance, that he was not certain whether the Union's position was correct and suggested that it be agreed that his company continue to use Crowley's products until the matter could be arbitrated. Local 680 made no reply to this letter, but Keber prior to the letter being sent had had a conversation with the attorney for the company in which he maintained that Local 680 was acting in accordance with its contractual rights and referred the attorney Elmer Goodwin, to counsel for the

Union.[5] Lang did not give any orders to his employees after the April incident directing them to handle Crowley's products.

Local 680 stipulated that its shop steward, Elias, told employees on April 1 not to handle Crowley's products. It maintained these instructions were revoked the next day on instructions from the Union.

Keber testified that he learned that Elias had given direct orders not to handle Crowley's products and Iorio, a union business representative, was sent to North Jersey to straighten matters out.

Elias testified that when he saw a delivery of ice cream mix being made from a Crowley's truck on April 1 he told an ice cream maker, George Machuella not to handle Crowley's products. Later, Elias told an employee a Local 680 member of the situation. The next day, Tony Iorio, a union business agent, told him he had violated union laws under which members were supposed to obey orders and told him to tell Machuella he could handle Crowley's products. This was done, according to Elias.

Elias remembered speaking to Lang and McCormick, an employee of the company, on April 1. He could not recall what he told Lang. He remembered telling McCormick that Machuella should not handle the Crowley's mix. He further testified that he could not remember telling Lang he would have to take Machuella to the union hall if the latter were sent home.

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[5] Goodwin also testified that Keber told him that the men could not handle Crowley's products.

Joseph Thompson & Sons

Frank G. Thompson, a partner in the dairy processing firm of Joseph Thompson & Sons, testified that he returned from a vacation on March 30, 1955, and then first saw Local 680's letter of March 9. On March 31 he wrote the Union that he had been advised by Crowley's that there was no labor dispute pending between it and the Teamster locals named in the union contract and that Thompson's attorney was doubtful of the validity of the contract clause and the cooperation requested by Local 680. He requested that the matter be submitted to arbitration and that the letter of March 9 be withdrawn pending the decision of the arbitrator. On the day the letter to Local 680 was sent or the next day, Thompson continued, Isaac Fevang, the union steward on the job, spoke with him and told him that he was advised "down below" that the Company would have to discontinue handling Crowley's products; otherwise he would have to advise the men not to handle them. Thompson replied that he was satisfied with Crowley's products but would make other arrangements after the next delivery from Crowley's. This was done. No specific orders to handle Crowley's products were given to employees after Thompson talked with Fevang.

Local 680 on April 1, 1955, replied to Thompson's letter. It expressed willingness to arbitrate, but refused the request to postpone the application of the hot goods provision of its Contract (Sec. 18 D). The letter, signed by Keber but dictated by counsel, concluded: "You are at liberty to request arbitration, and if you do, we shall engage in arbitration proceedings with you. Meanwhile, however, our members will not handle Crowley's Milk or milk products."

Fevang testified that stewards were instructed by the Union to obey orders, but to report to the Union any infractions of the labor contract. He received a copy of the March 9 letter. He understood the letter to mean that the union members should not handle Crowley's products in the absence of a direct order from the employer. However, he did not call the letter to the attention of the union members at Thompson. After Thompson returned from his vacation, Fevang spoke with him on April 1 or 2 and asked him not to handle Crowley's products. He denied giving Thompson any ultimatum or stating the men would not handle Crowley's products. He had no instructions or communications from the Union on this matter other than the March 9 letter. He denied that a final Crowley's shipment was handled on April 4 or 5 only after specific assurance was obtained from Thompson that no more orders would be placed with Crowley's. He did admit that Thompson told him it would be the last shipment.

* * *

On September 26, 1955, Local 680 sent a letter to all employers with whom it had contracts telling them that despite information to the contrary its dispute with Crowley's still continued. It asked continued cooperation and compliance with the contract by not handling Crowley's products.

2. By Local 338

Local 338 and certain employers are parties to a standard agreement entitled, "Milk Industry Collective Bargaining Agreement." On March 17, 1955, Local 338 sent the following letter to all employers who were parties to the standard contracts:

Intermediate Report and Recommended Order.

Gentlemen:

Local 680 and Local 338 are directly engaged in a labor dispute with Crowley's Milk Company. On a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Company was found by the Board and the Court to have engaged in an unfair labor practice. May we remind you of Section 18 (d) of our contract which reads as follows:

"It shall not be a violation of this Agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the Union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this Agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Employer of the existence of such labor dispute."

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Company. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Company and will discon-

tinue making deliveries or pickups to or from this Company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested. Please acknowledge receipt of this letter.

Very truly yours,

/s/ JOHN A. MANCHESTER,
Secretary-Treasurer, Milk Drivers and Dairy Employees Local 338

Edward Greco, doing business as Maple Grove Dairy, is a dealer in milk and milk products and, as of April 1, 1955, was a customer of Crowley's and distributor of its products. Greco was a party to the standard contract and received a copy of the March 17 letter. On March 24, Greco sent the following letter to Local 338:

> Reference to your letter of March 16, I have contacted Continental Can Company to make up containers under our trade name for the by products we purchase from Crowley's Milk Company. The best service they can promise is 6 to 8 weeks to get our plates made up and approved, so Best regards

In or about April 1, 1955, Manchester telephoned Greco and asked him not to handle Crowley's products. Greco replied that he would discontinue handling Crowley's products when he obtained containers bearing his own label.

At a union meeting held in or about June or July 1955, and attended by employees of Greco and other companies party to the standard contract, William F. Kenndy, busi-

ness agent of Local 338, stated that Local 338 had sent a copy of the March 17 letter to Greco and that his employees would soon have to stop handling or working upon Crowley's products, they did not have to handle Crowley's products by the terms of the standard contract, could not be discharged for such a refusal, and should not handle Crowley's products.

On or about August 1, 1955, Manchester telephoned Greco and asked him whether he was still handling Crowley's products. When Greco replied that he was, Manchester stated he would call Greco's employees out on strike. On or about August 2 and since that date Local 338 instructed and directed its members employed by Greco not to handle, transport, work on, or process Crowley's products. Up to or about August 8, 1955, employees of Greco regularly handled, transported, worked on, and processed Crowley's products. Pursuant to the aforesaid instructions from Local 338 employees of Greco, from on or about August 8 have refused to handle, transport, work on or process Crowley's products. An object of the conduct of Local 338, it was stipulated, was to have Greco, doing business as Maple Grove, stop handling Crowley's products.

Greco, on his part, attempted to continue handling Crowley's products. It was stipulated that on or about August 8 Greco orally directed his employees to handle Crowley's products, but the employees followed instructions from Local 338 and refused to handle those products. On August 9, Greco posted the following written notice on the bulletin board in the company drivers' room:

Notice to All Employees

As your employer I, hereby direct you to distribute & sell all Milk & Milk Products that I purchase for resale. Including products from Crowley's Milk Co.

ED GRECO

Notwithstanding this notice, the employees refused to and still continue to refuse to handle Crowley's products, pursuant to instructions from Local 338.

D. *Contentions of the Parties: Conclusions*

1. Effect of the "hot cargo" provisions

The Respondents are charged with violating Section 8 (b) (4) (A) of the Act. This Section, so far as material here, provides:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

• • • "(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring • • • any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative

> of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; * * *

No contention has been raised as to the primary picketing conducted at Crowley's premises by the two locals. What is involved is the legal effect of their conduct so far as it relates to secondary employers, customers of Crowley's, and their employees.

The Respondents contend that the so-called "hot cargo" clauses which were in all their contracts furnish a complete defense to the charges and permitted the issuance of the letters and instructions summarized in the prior sections of this Report. Local 680 had a standard provision stating that it would not be a violation of the agreement for members of the Local to refuse to handle material received from or to make deliveries to or pickups from any employer with whom Local 680 or certain sister locals had a labor dispute. Local 338 has the identical clause in its standard contract.

The legal effect of certain hot cargo clauses has been construed by the Board and the Courts in several cases.

In the *Conway* case,[8] the Board considered the validity of the following two hot cargo clauses:

> The Union reserves the right to refuse to handle goods from any firm or truck which is engaged in any controversy with this or any other Union.
>
> The Union reserves the right to refuse to accept the freight from or to make pick-ups from or deliveries to establishments where picket lines, strikes, walkouts and lock-outs exist.

[8] *Rabouin d/b/a Conway's Express*, 87 NLRB 972.

It made the preliminary finding:

> In reliance on this contractual provision, Respondent's shop stewards at each of the three establishments ceased handling Conway's freight upon being advised by the Respondent's office that the Conway strike was "on." And each of the employers, apparently mindful of its contractual obligation, acquiesced in its employees' refusal to handle the "hot" cargo. (P. 981)

It then held:

> It is evident from these facts that the three secondary employers, in effect, consented in advance to boycott Conway's. As they consented, their employees' failure to deliver freight to or accept freight from Conway trucks was not in the literal sense a "strike" or "refusal" to work, nor was any such concerted *insubordination* contemplated by the Respondent when it caused the employees to exercise their contractual privilege. In the circumstances, Section 8 (b) (4) (A) cannot apply, unless we accept the General Counsel's argument that the "hot cargo" contracts were repugnant to the policy of the amended Act and therefore invalid after the effective date of the 1947 amendments. But we find no merit in this argument. Section 8 (b) (4) (A) of the Act prohibits *labor organizations* from "forcing or requiring" the participation of neutral employers in secondary boycotts by the use of certain forms of employee pressure, namely, strikes or work stoppages (either actually engaged in, or "induced" or "encouraged" by the union). This section does not proscribe other means

by which unions may induce employers to aid them in effectuating secondary boycotts; much less does it prohibit *employers* from refusing to deal with other persons, whether because they desire to assist a labor organization in the protection of its working standards, or for any other reason. An employer remains free, under that section of the amended Act, as always, to deal with whatever firms, union or nonunion, he chooses. And by the same token, there is nothing in the express provisions or underlying policy of Section 8 (b) (4) (A) which prohibits an employer and a union from voluntarily including "hot cargo" or "struck work" provisions in their collective bargaining contracts, or from honoring these provisions. That is all that happened in this case. (Footnotes omitted.) (P. 982-3)

The Board's decision in the Conway case was affirmed on review in the Court of Appeals.[7] The Court expressly upheld the validity of the negotiation of hot cargo clauses, stating:

The union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provision relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's "forcing or requiring any employer * * * to cease doing business with any other person," § 8 (b) (4) (A). (P. 912-13)

[7] 195 F. 2d 906.

It also upheld the validity of requests *to neutral employers* not to accept shipments from any employer against whom a union was striking.

In the *Pittsburgh Plate Glass Company* case, 105 NLRB 740, the Board specifically considered the validity of direct appeals by a union to employees of secondary employers not to handle the goods of a primary employer when the Union and the secondary employer were parties to a contract with a hot cargo clause. In this case the Board, after reviewing the evidence, found "that during the period involved herein, the Respondent engaged in, and by its instructions and other appeals, induced and encouraged the employees of various trucking carriers [the secondary employers] to engage in a concerted refusal to handle Pittsburgh [the primary employer] freight." (p. 743) It further found that with but one belated exception the employers affirmed the contracts by acquiescing in their enforcement. It then concluded:

> So, as the employers in this proceeding consented to the "unfair goods" provision of the contracts, their employees' failure to handle these goods was not a strike or concerted refusal to work under Section 8 (b) (4) (A). Nor was their employees' refusal to handle Pittsburgh freight "in the course of • • • employment" within the meaning of Section 8 (b) (4) (A) for that employment as defined by the contracts excluded from the required job duties work on "unfair goods." It cannot be said, therefore, that by causing the employees to exercise their contractual privilege, the Respondent induced a concerted refusal to work in the course of employment with an object of forcing any employer

to cease doing business with any other person in violations [*sic*] of Section 8 (b) (4) (A). We concluded it matters not that the contracts did not reserve to the Respondent as distinguished from the employees the right to refuse to handle "unfair goods." (page 744)

The decision in the *Pittsburgh Plate Glass* case was cited and followed in the case of *Madden v. Local 442, International Brotherhood of Teamsters, etc.*, 114 F. Supp. 932, (U. S. D. C., W. D. Wis.) where an injunction was refused although the Court found that there had been inducement or encouragement of employees of secondary employers to cease handling goods of a primary employer, holding that there had been a valid exercise of the right to enforce a hot cargo clause.[8]

Local 338 relying on the *Conway* and *Pittsburgh Plate Glass* cases contends that its activities were identical with those in those two cases and that its hot cargo clause furnishes a valid defense for the reasons set forth in those cases.

The Board has reviewed the *Conway* doctrine in the case of *McAllister Transfer, Inc.*, 110 NLRB 1769. In the McAllister case there was an "unfair goods" clause between a union and certain freight carriers providing that it would not be a violation of the contract nor a reason for discharge for an employee to refuse to go through a picket line or refuse to handle unfair goods. An addition was later added stating that the union and its members, individually and collectively, reserved the right to refuse to handle goods of

[8] A memorandum decision to the same effect was handed down in *N. L. R. B. v. Lodge 850, etc. (American Iron and Machine Works Co.*, U. S. D. C. E. D. Okla., Case 6428, Oct. 25, 1954).

any firm engaged in a controversy with a union. It was found that there had been direct inducement by the union involved of employees of secondary employers in aid of a labor dispute it had with McAllister. These efforts were successful even though at each of the three carriers involved a notice to employees was posted:

> Our Company is not having a labor dispute with any labor union. As a common carrier holding authorities under Federal and State laws, we are required to transport all commodities properly tendered to us.
>
> Therefore, we direct all of our employees to handle freight received by us, without discrimination as to shippers or motor carriers who may be interlining freight with us. This includes freight which we originate and is destined beyond our line in which specific routing is furnished to us by the shipper.

Two members of the Board joined in an opinion holding that secondary employers could not waive the provisions of Section 8 (b) (4) (A) since they were specifically intended to protect the public interest. They held that the *Conway* doctrine should be reversed and that it should be held that hot cargo clauses do not constitute a valid defense to charges of violations of Section 8 (b) (4) (A).

Two members of the Board joined in a dissenting opinion upholding the *Conway* doctrine as developed in later Board and court cases.

A separate concurring opinion was filed by the Chairman. He joined in the finding of a violation of the Act. However, he declared, "I do not find it necessary, or even appropriate, to overrule the Board's Conway decision, • • •

nor would I go so far as to characterize the 'hot cargo' provision of the contract as being contrary to public policy." Nor, he stated would he treat the private agreement as supreme.

> I doubt that public policy requires us to invalidate a hot cargo provision any more than it requires us to raise such a provision to a dignity which permits it to override other relevant facts. I will assume for the purpose of this case that the secondary employers and the union could lawfully (insofar as the Statute is concerned) contract for a hot goods provision, and they could also mutually abide by it. Moreover, I will assume that, had they done so, there would have been no showing of a violation of Section 8 (b) (4). This, I conclude, is the holding in the *Conway* case, and since it has court approval, I would be loathe to disturb it.

The standard the Chairman applied to the case is as follows:

> I am convinced that acceptance of the *Conway* decision would not dispose of this case. Here, the facts which are set forth in the majority decision disclose, and the Trial Examiner found, that the Unions affirmatively induced and encouraged their members to refuse to handle McAllister freight. Since this was done in furtherance of an objective interdicted by Section 8 (b) (4), the conduct here is violative of the plain and literal language of the Section. It is impossible to say here, as in *Conway*, that there was no unlawful "inducement" or "refusal" on the part of the employees to handle McAllister freight. This is so for the simple reason that the secondary employers

here posted notices to their employees directing them to handle all freight without discrimination. These notices were posted for the express purpose of putting employees on notice that they were expected to handle McAllister's goods when presented at the docks.

In the face of this affirmative evidence that the employees were acting contrary to explicit instructions, which was not true in *Conway*, I am unable to escape the conclusion that there was a clear "refusal" by the employees to handle McAllister freight.

Thus, we are confronted here with a case in which all of the elements of a violation—inducement, refusal, and unlawful objective—have been proved. The fact that one or more of these essential elements *might have been lacking* had the secondary employer adhered to his contract undertaking to boycott "hot cargo" is not enough to bring this case within the holding of the *Conway* decision. The General Counsel issued the complaint, and tried the case on the theory that this case was distinguishable from Conway, and I agree with his position. Accordingly, I concur in the finding that Respondents have violated Section 8 (b) (4) (A) and (B).

Local 680 contends that since, in the *McAllister* case there was a majority holding of a violation of Section 8 (b) (4) (A) only to the extent that limitations outlined in the chairman's opinion were met, the case stands for the proposition that there is a violation only when employees on inducement or direction of their union refuse a direct and affirmative order from their employer to handle goods of a primary employer. Local 680 contends that it at-

tempted to follow and obey this decision. It points out that its letter to Local 680 stewards was the only information sent them about the Crowley's dispute, that stewards and members generally had been told to obey instructions from their employers even if they believed that a violation of the contract with the Union had occurred, and that no affirmative instructions of the type used in the *McAllister* case had been given by any employer to any union member who was not handling Crowley's products. It also contends that in one instance where a steward ordered members not to handle Crowley's products, Local 680 disavowed his action the next day.

The Board, in the *Sand Door* case, *Local 1976, etc. (Sand Door and Plywood Co.)*, 113 NLRB No. 123, considered whether a contract clause with a secondary employer providing, "Workmen shall not be required to handle non-union material," removed certain conduct from the proscription of Section 8 (b) (4) (A) under the so-called *Conway* doctrine. Two members of the Board joined in an opinion holding that such a "hot cargo" clause was no defense when employees were approached by their union and urged not to handle goods of a primary employer. They said in part:

> It is well settled that, where an employer, at the request of a union which refrains from the use of threats or direct appeals to his employees, voluntarily agrees to boycott the goods of another employer, there is no violation of Section 8 (b) (4) (A) because there has been neither a strike nor inducement or encouragement of employees to engage in such conduct. . . .

* * * Insofar as such contracts govern the relations of the parties thereto with each other, we do not regard it our province to declare them contrary to public policy. However, we do not agree that unions, which are parties to such contracts, may approach *employees* of the contracting employer and induce or encourage them to refuse to handle the goods of another employer with immunity from the sanctions of Section 8 (b) (4) (A). In our opinion, such conduct constitutes inducement or encouragement of employees to engage in a concerted refusal to handle goods for an object proscribed by Section 8 (b) (4) (A) no less than it does in the absence of such agreement * * *.

The Employer, but not the union, may instruct his employees to cease handling goods sought to be boycotted. Until the Employer instructs his employees that they need not handle the "unfair" product, a strike or concerted refusal to handle such goods constitutes "a strike or concerted refusal in the course of employment" to handle the goods within the meaning of Section 8 (b) (4) (A) * * *.

We hold that, regardless of the existence of a "hot cargo" clause, any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present * * *.

As to the point first raised in the *Pittsburgh Plate Glass* case, *supra*, as to meaning of the words in the statute "in the course of their employment," they hold that this phrase was intended to distinguish between employees

in their capacity as employees and employees in their capacity as consumers.

One member concurred in the result, but stated he was convinced that hot cargo clauses were contrary to public policy. Two members dissented on jurisdictional grounds. One member also disagreed with the approach of the majority to hot cargo clauses and stated, in substance, that such clauses were valid and that it was the right and duty of a union to inform its members of their rights under a contract and to take action to prevent a breach or repudiation of a contract.

The undersigned concludes that the general rule enunciated in the *Sand Door* case is applicable herein and it will be applied. In addition, the undersigned relies on the express language of the clause which was in the standard contracts of Locals 680 and 338. This clause provided, "It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer * * * with whom these locals or certain other sister locals had a dispute. A companion clause dealt with pickups and deliveries. These clauses were part of a contract dealing with the rights and obligations of an employer, the particular union involved, and employees. It contained provisions governing discipline and discharge of employees for failure to obey orders. These clauses gave the employees certain rights in the event they individually or collectively refused to handle shipments from employers with whom the named locals had a dispute. In and of itself the contract did not deal with and could not legalize conduct aimed at other employers and in violation of a statute. The

point is developed in the opinion in the New Jersey proceeding in this case, 433 Fed. Supp. 336, 341.

What has become known as the *Conway* doctrine would give added import to a hot cargo clause, such as the one involved here. This doctrine has been examined and re-examined in several cases and has resulted in split decisions in Board cases where it has been considered. In view of this situation and the possibility that the *Conway* doctrine may be given further examination, the undersigned makes the following comments on certain of its aspects.

In the *Conway* case, clauses very similar in import to the ones in the present case were considered. They provided, "The Union reserves the right to refuse to handle goods from any firm or truck which is engaged in any controversy with this or any other Union." There was a similar clause on pickups and deliveries. Union stewards employed by secondary employers refused to handle freight of a primary employer and the secondary employer acquiesced in the refusal by not doing anything about it. The passage was advanced that the secondary employers, in their contracts with the union involved had, "in effect, committed in advance to boycott Conway's" (the primary employer). "As they consented, their employees' failure to deliver freight to or accept freight from Conway is not in the literal sense a 'strike' or 'refusal' to work within the meaning of the Act." (187 NLRB 972, 973.) In the opinion of the undersigned a distinction must be made between an agreement by an employer that he will not handle goods of a primary employer and an agreement by him that employees may refuse to handle certain goods. The former situation is an agreement by an employer to

boycott goods; in the latter, the secondary employer agrees that his employees may stop handling certain goods, if they choose. Both situations were present in the *Conway* case. Actually, in *Conway* secondary employees did refuse to handle deliveries from a primary employer. The hot cargo clause of the contract came into play *because* they had so refused. It furnished a basis for protection of those employees from discipline or discharge by their employer because of their failure to perform their regular duties.

The *Conway* case involved several important and difficult issues besides the nature and legal effect of hot cargo clauses and the particular one involved in the case. The Board's decision was affirmed in the Court of Appeals. An examination of the majority opinion indicates that there was extensive argument before the Court on the question whether pressure on *neutral employers* to stop accepting shipments was violative of Section 8 (b) (4) (A). It does not appear that the meaning and scope of the exact language of the particular hot cargo clause received similar consideration, although there is some mention of it in the briefs filed by Conway.

In the *Pittsburgh Plate Glass* case, 105 NLRB 740, 744, the point was made that since the hot cargo clause provided that it would not be a violation of the contract or a cause for discharge for employees to refuse to handle "unfair goods," a refusal to handle such goods was not "in the course of their employment," within the meaning of Section 8 (b) (4) (A) since such work was excluded from the required job duties. The Board, in the later *Sand Door* case construed the statutory phrase as meant to distinguish between employees in their capacity as employees as

employees in their capacity as consumers. Also involved is the question whether an exclusion of the handling of goods on the sole basis of whether the primary employer is engaged in a labor dispute can stand as a defense to a Section 8 (b) (4) (A) proceeding in view of the purpose and policy behind this section of the Act.

The point has been made in some cases, especially in *M. Hilsted, Supra*, that there can be no refusal, as such, until a direct order from an employer is issued and not followed. When an employee is hired to regularly load and unload trucks and when a truck appears at a loading dock he either stands by and does nothing or announces he will not unload the truck, this is a refusal, in the opinion of the undersigned. An additional and affirmative order can only restate the duties of the employee. He is already obligated to do what he has failed to perform. Of course, evidence is admissable to determine whether there has been a misunderstanding instead of a refusal. The point the undersigned wishes to make is that a refusal can consist of a failure to perform regularly assigned work.

2. Violation of Section 8(b) (4) (A)

employees were under contractual obligation and oral instruction from union officials to obey orders of their employers, even though they considered them in violation of the standard contract. Significantly the letter to the employers quoted provisions of the contract giving employees a right to refuse to handle hot cargo. It did not point to the clause in the contract requiring employers not to aid other companies "in any fight that may be waged against the Union" (Sec. 18 (b) of the standard milk contract.) It may be arguable whether employees were expected to obey affirmative orders from their employers in view of their contractual protection, but it is apparent that in the first instance they were expected to and did stop handling Crowley's products on April 1, 1955, the date set in the letter for breaking business relations with Crowley's.

Keber, Local 680 secretary-treasurer, testified that he expected all members not to handle Crowley's products in the absence of a direct order from their employer. Shuta, Local 680 steward at International Milk Company, testified that he posted the letter on the company bulletin board and would not unload Crowley's trucks because of the contents of the letter. His description of his refusal to unload a Crowley's truck on April 4, 1955, illustrates quite clearly his understanding of what Local 680 expected him to do.

At Sunrise Dairies the Local 680 steward, Del Vecchio, did not post the March 9 letter, but he did tell two employees of it and that they were advised not to accept any of Crowley's products. A Crowley's shipment was not handled by the employees on April 1.

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North Jersey Dairyland was the only concern whose steward was reprimanded by Local 680 for telling employees not to handle Crowley's products. However, the record indicates that Local 680 officials were concerned that the instructions of the steward, Elias, might be construed by the employees as a direction to disobey affirmative instructions. There was no effort by Local 680 to instruct employees they could handle Crowley's products even in the absence of an affirmative order.

Isaac Fevang, Local 680 steward at Joseph Thompson & Sons testified he understood the March 9 letter to mean that union members should not handle Crowley's products. He did not tell the other union members of the letter, but he did ask his employer not to handle Crowley's products.

Under the standard set forth in the *Sand Door* case, *supra*, "regardless of the existence of a 'hot cargo' clause, any direct appeal to employees by a union to engage in a strike is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present."

The undersigned concludes that the letter of March 9, 1955, sent by Local 680 to the stewards of Crowley's customers, International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, together with oral transmission of the contents of the letter by the stewards and their orders to employees, as set forth in this section, constituted inducement or encouragement of employees to engage in a concerted refusal to handle Crowley's goods within the meaning of the Act and as applied in the *Sand Door* case, *supra*. An object of this activity was to force a cessation of business between

the secondary employers and Crowley's, an object proscribed by the Act.[9]

Local 680 contends that where a steward did not tell his fellow employees of the March 9 letter there was no "concerted refusal" within the meaning of Section 8 (b) (4) (A). Such a contention has been rejected by the Board.[10]

As to Local 338, it is clear that its activities with respect to Edward Greco, doing business as Maple Grove Dairy violated both the test set forth in the *Sand Door* and in the McAllister cases, *supra*. Employees of Maple Grove were urged by a union official at a union meeting not to handle Crowley's products. Subsequently they were ordered by Local 338 not to handle Crowley's products and they have persisted in their refusal despite an affirmative order to handle those products.[11] Since the Maple Grove employees acted under direct instructions from Local 338, that Local not only induced and encouraged employees to refuse to handle Crowley's products, but it also engaged in a strike or concerted refusal.

For reasons previously stated, the undersigned deemed it unnecessary to make any findings with respect to em-

[9] It is not necessary to decide whether the sending of the March 9 letter to stewards of companies other than those shown on the record to be employees of the companies handling Crowley's products was violative of the Act since such a finding would merely be cumulative and would not affect the relief to be directed.

In making the above findings, the undersigned has not relied on any of the testimony in the New Jersey proceeding which was contraverted. He has relied principally on the documentary evidence and the testimony of the stewards themselves.

[10] *Local 11, United Brotherhood of Carpenters and Joiners, etc. (General Millwork Corporation)*, 113 NLRB No. 124, n. 6).

[11] Local 338 has argued in a memorandum that the denial of an injunction against Local 338, on application of the Regional Director requires that the decision of the undersigned and the Board must conform to that decision. For the reasons set forth in *N. L. R. B. v. Denver Building and Construction Trades Council, et al.*, 341 U. S. 677, 681, this contention is rejected.

ployers who were parties to the standard contract with Local 338, but who were not shown in this proceeding to have been customers of Crowley's.

3. Violation of Section 8 (b) (4) (B)

Section 8 (b) (4) (B) provides that it shall be an unfair practice for a labor organization or its agents to engage in or induce or encourage employees to engage in a strike or refusal to handle goods or perform services where an object is forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees, unless such labor organization is a certified representative. The complaint alleges and the General Counsel contended that both Local 680 and Local 338 violated this section of the Act and were attempting by their activities involving secondary employers to force Crowley's to bargain with them.

The General Counsel relies, primarily, on the history of attempts by these two locals to attain collective bargaining status at Crowley's. Local 680 filed a representation petition in February 1948 for a unit at Crowley's Paterson plant. Later in that year it had filed charges of unfair labor practices against Crowley's including an allegation of unlawful refusal to bargain. A complaint was issued by the General Counsel. On March 13, 1950, the Board issued its Decision and Order, finding that Crowley's had violated certain provisions of the Act, but rejecting the refusal to bargain allegation. When Local 680 sent its letters to the secondary employers and shop stewards on March 9, 1955, 5 years after the above Board decision, it referred to that proceeding in the very beginning of the letter:

> This Local Union, Local 680, and also our sister Local, 338, are and have been for some years, directly engaged in a labor dispute with Crowley's Milk Co. In fact, on a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Co. was found by the Board and the Courts to have engaged in an unfair labor practice.

After quoting the hot cargo clause of its standard contract, Keber stated in the letter "This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Co." Cooperation of the secondary employers then was requested. In its letter of September 26, 1955, to secondary employers Local 680 reiterated that its labor dispute with Crowley's still continued, despite rumors to the contrary.

Local 680 points out that the Board decision of 1950 was never appealed by it and it never requested Crowley's to bargain since that date. The only request to bargain that it made was in 1948. Counsel for Local 680 pointed out that the term, "labor dispute," as defined in the Act encompasses more than strikes for recognition, and contended that Local 680's picket signs carried the statement that Crowley's was unfair because the Board and the Courts had so held. He also stated, "The dispute concerns the association. We are trying to get the employees of Crowley to join our union. There is nothing in the Act which indicates that that is improper."

In the case of Local 338, it had filed representation petitions for a unit at Crowley's Newburgh plant in 1950 and 1951. Each had been dismissed the following year. Local 338's organizing efforts at Crowley's date back to 1945

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In its March 17, 1955, letter to secondary employers, Local 338 began the letter by stating:

> "Local 680 and Local 338 are directly engaged in a labor dispute with Crowley's Milk Company on a charge filed by Local 680 with the National Labor Relations Board. Crowley's Milk Company was found by the Board and the Court to have engaged in an unfair labor practice."

Its pickets carried signs urging Crowley's employees to join Local 338.

Local 680 contends that it should not be held to have violated Section 8 (b) (4) (B) of the Act on the basis of a request for recognition made in 1948. Local 338 argues that it would be unfair to find it had violated the Act because it attempted to use the Board's facilities in 1950 and 1951 for a certification of representatives.

The issue here is the object of these Respondents in their current activities. Their picket signs did not indicate that they sought recognition from Crowley's; nor did they make any demands on Crowley's. Yet, those factors do not dispose of the issue, although they must be weighed with other facts.[12] If the current activities of these Respondents had had no link with past activities, the contentions of the Respondents would have been fully supported by the record. However, there are such links. According to Keber, Local 680 stopped picketing Crowley's in 1949 when he was advised that an Eastern Conference of Teamsters

[12] *International Union of Operating Engineers, Local 12 (Crook Company)*, 115 NLRB No. 9; *International Brotherhood of Teamsters, Local No. 41, etc., Union (Chevrolet Company)*, 96 NLRB 957, 958; *Bonnaz, Hand Embroiderers (Gemsco)*, 111 NLRB 82, 89.

would be formed through which disputes, such as its dispute with Crowley's would be better handled. Apparently, in 1955 the time was considered propitious for taking common action against Crowley's. The decision was made at a meeting of the Conference attended by representatives from the International and local unions who handled dairy products throughout the Eastern Seaboard, including representatives of the Respondents. At that time there was no outstanding unfair labor practice charge or representation petition filed by these Respondents against Crowley's nor had there been any communication between these unions and Crowley's for a long time. The Respondents began picketing and sent out letters to secondary employers stating they had a long-standing labor dispute with Crowley's and urging the secondary employers to break off business relations with Crowley's. The Respondents were within their rights in trying to organize employees of Crowley's, but their activities with regard to the secondary employers was hardly consistent with such a plan as their sole objective.

The undersigned concludes that the preponderance of the evidence establishes that the conference meeting at which joint action was agreed to was the link between earlier unsuccessful efforts by these Respondents and their later efforts to bring economic pressure on Crowley's to obtain the same objective. It is further concluded that the conduct of these Respondents with respect to the secondary employers was not protected and since an object of their efforts was to secure recognition and bargaining rights from Crowley's, their conduct was violative of Section 8 (b) (4) (B) of the Act.

4. Joint responsibility

The General Counsel contends that the Respondents were engaged in a joint venture and should be held jointly responsible for all activities found violative of the Act. The evidence does establish that the Respondents participated in a meeting at which it was decided to take action against Crowley's. The letters sent by each local were almost identical in content and sent within a week of each other. Picketing activities by each were close in time. However, from that point on there was a very significant divergence in tactics. Local 680 made efforts to conform to its interpretation of the latest Board decision on secondary boycotts, Local 338 did not. Each local, as far as the evidence shows, determined for itself just how it would implement the joint decision to proceed against Crowley's. Under these circumstances the undersigned concludes that there was not such a joint control over details of the campaign to warrant holding each local for the activities at the other.[18] This is especially true in the case of Local 680. The undersigned therefore rejects the contention that the Respondents should be held jointly and severally liable.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Charging Party and the named secondary employers, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to

[18] Compare, *United Mine Workers of America, (Union Supply Company)*, 90 NLRB 436; *District 50 United Mine Workers of America (Tungsten Mining Corporation)*, 106 NLRB 903.

burden and obstruct commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondents have violated Section 8 (b) (4) (A) and (B) of the Act, it will be recommended that they cease and desist therefrom and take certain affirmative action which it is found necessary to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Milk Drivers and Dairy Employees Local Unions No. 680 and No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The Respondent, Local 680 has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act, by inducing and encouraging employees of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, to engage in a strike or a concerted refusal in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is to force or require their employers to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products, and with a further object to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 680 as the representative of certain of its employees, although Local 680 has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. The Respondent, Local 338, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act, by engaging in and or inducing and encouraging employees of Edward Greco, d/b/a Maple Grove Dairy, to engage in a strike or a concerted refusal in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is to force or require their employer to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products, and with a further object to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 338 as the representative of certain of its employees, although Local 338 has not been certified as the representative of such employees under Section 9 of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law it is recommended that:

1. The Respondent, Local 680, shall cease and desist from inducing and encouraging employees of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to

handle or work on its products; (b) to force or require Crowley's Milk Company, Inc. to recognize or bargain with Local 680 as the representative of certain of its employees, unless and until Local 680 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

2. The Respondent, Local 338, shall cease and desist from engaging in and or inducing and encouraging employees of Edward Greco, d b a Maple Grove Dairy, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 338 as the representative of certain of its employees, unless and until Local 338 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. The Respondents shall take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at their respective business offices copies of the attached notices: Appendix A in the case of Local 680 and Appendix B in the case of Local 338. Copies of said notices, to be furnished by the Regional Director for the Second Region, after being duly signed by official representatives of the Respondents, shall be posted by them immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to

members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

Local 680 shall also sign copies of Appendix A which the Regional Director shall submit for posting at the premises of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons. Local 338 shall also sign a copy of Appendix B for posting at the premises of Edward Greco, d b a Maple Grove Dairy.

(b) Notify the Regional Director for the Second Region in writing within twenty (20) days from the date of service of this Intermediate Report and Recommended Order what steps the Respondents have taken to comply herewith.

It is also recommended that unless the Respondents shall, within twenty (20) days from the date of service of an order transferring this case to the Board, notify the Regional Director, in writing, that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondents to take the action aforesaid.

Dated at Washington, D. C., this 21st day of February, 1950.

SIDNEY L. FEILER,
Trial Examiner.

Appendix A attached to Intermediate Report and Recommended Order.

IR-833

APPENDIX A.

NOTICE

TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT induce or encourage employees of INTERNATIONAL MILK COMPANY, SUNRISE DAIRIES, NORTH JERSEY DAIRYLAND, INC., and JOSEPH THOMPSON & SONS, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 680 as the representative of certain of its employees, unless and until Local 680 has

been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

JR-833

APPENDIX B.

NOTICE

TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT engage in and/or induce or encourage employees of EDWARD GRECO, d/b/a MAPLE

Appendix B attached to Intermediate Report and Recommended Order.

GROVE DAIRY, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 338 as the representative of certain of its employees, unless and until Local 338 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[1] **Stenographic Transcript of Testimony at Hearing of October 31, 1955.**

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

In the Matter of:

MILK DRIVERS & DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL,

MILK DRIVERS & DAIRY EMPLOYEES LOCAL NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL

and

CROWLEY'S MILK COMPANY, INC.

Case Nos. 2-CC-333
2-CC-355

2 Park Ave.
New York, New York

Monday, October 31, 1955

Pursuant to notice, the above-entitled matter came on for hearing at 1:00 o'clock p. m.

Before: Sidney L. Feiler,

Trial Examiner

Stenographic Transcript of Testimony at Hearing of November 1, 1955.

Appearances:

Samuel M. Kaynard, Counsel for the General Counsel, National Labor Relations Board.

Lloyd C. Anderson, 193 Water Street, Binghamton, N. Y., appearing on behalf of the Employer.

Parsonnet, Weitzman & Cransky, By: Thomas L. Parsonnet, 1060 Broad Street, Newark, N. J., appearing on behalf of Local 680.

Samuel J. Cohen, 50 E. 42nd St., New York, N. Y., appearing on behalf of Local 338.

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[70] **Stenographic Transcript of Testimony at Hearing of November 1, 1955.**

• • •

[72] PROCEEDINGS.

• • •

[90] Trial Examiner: That is the way I understand, that you people are stipulating that if these people were called to this proceeding, they would testify as indicated, that if the same questions were asked them as appear in that record, they would testify as indicated under the portions of the transcript and the exhibits introduced here.

• • •

[92] Trial Examiner: I don't want to get too far away from it. I just want to raise this point with you gentlemen.

I did not see these people, and I don't know them. If there is any question of credibility in this record, all the stipulations in the world will not help me resolve it.

• • •

General Counsel's Exhibit 4.

[94] Trial Examiner: On the record.

I understand from counsel, as a result of an off the record discussion, that General Counsel and Mr. Parsonnet feel, that while there would appear to be some conflict of testimony in different portions, they feel there is no material conflict and that it would not interfere with the arrival of any findings of fact.

Is that about it, gentlemen?

Mr. Parsonnet: That is my opinion.

• • •

General Counsel's Exhibit 4.

AGREEMENT

New York City, Northern New Jersey
and
Southern New York State Area-Wide
Union Agreement in the
Ice Cream Industry
of the
Ice Cream Drivers
and
Employees Union
LOCAL 680
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Helpers of America
A. F. of L.
535 High Street, Newark, N. J.
Expires April 30, 1955
Telephone: MArket 2-4103
(Union Label) 285

General Counsel's Exhibit 4.

MILK DRIVERS AND DAIRY
EMPLOYEES LOCAL 680
of the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
535 High Street, Newark, N. J.

MArket 2-4103

Regular Meetings—3rd Thursday—7 P.M.

Special Ice Cream Meetings
2nd Thursday of
February, April, May and September—8 P.M.

AT NEWARK LABOR LYCEUM
704 South 14th Street, Newark, N. J.

No Meetings July and August

Lawrence McGinley ..... President
Richard Keber ..... Secretary-Treasurer
William Williamson ..... Vice-President
James Rafferty ..... Recording Secretary
David Cronin ..... Trustee
John Hoehler ..... Trustee
George Sherman ..... Trustee
Albert Cooke ..... Business Representative
Anthony Iorio ..... Business Representative

General Counsel's Exhibit 4.

ICE CREAM DRIVERS
AND
EMPLOYEES UNION
LOCAL 680
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and
Helpers of America
A. F. of L.

• • •

5. • • •

9

(d) It shall not be a violation of this Agreement for members of the Union to refuse to handle material in the possession of the Company received from any employer with whom Local 757 or Local 680 or Local 338 is directly engaged in a labor dispute, provided such material comes into the Company's possession more than 48 hours after the Union gives written notice to the Company of the existence of such labor dispute. It shall not be a violation of this Agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom

10

Local 757 or Local 680 or Local 338 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Company of the existence of such labor dispute.

• • •

11

General Counsel's Exhibit 16.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
LOCAL 338
2 Crary Avenue
Mount Vernon, New York

March 17, 1955

Gentlemen:

Local 680 and Local 338 are directly engaged in a labor dispute with Crowley's Milk Company. On a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Company was found by the Board and the Court to have engaged in an unfair labor practice. May we remind you of Section 18 (d) or our contract which reads as follows:

> "It shall not be a violation of this Agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the Union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this Agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Employer of the existence of such labor dispute."

General Counsel's Exhibit 17.

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Company. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Company and will discontinue making deliveries or pickups to or from this Company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested. Please acknowledge receipt of this letter.

Very truly yours,

JOHN A. MANCHESTER,
Secretary-Treasurer,
Milk Drivers and Dairy Employees,
Local 338.

General Counsel's Exhibit 17.

March 24, 1955

I. B. of T.
Local 338
2 Crary Avenue
Mount Vernon, New York

Dear John:

Reference to your letter of March 16, I have contacted Continental Can Company to make up containers under our trade name for the by-products we purchase from Crowley's Milk Company. The best service they can promise is 6 to 8 weeks to get our plates made up and approved, so Best regards

R. GRECO.

General Counsel's Exhibit 18.

Aug. 9th, 1955

NOTICE TO ALL EMPLOYEE'S

As your employer I, hereby direct you to distribute & sell all milk & Milk Products that I purchase for resale. Including products from Crowleys Milk Co.

ED GRECO.

BATAVIA TIMES PUBLISHING CO., BATAVIA, N. Y.
3-19-57-50

Office - Supreme Court, U.S.
FILED
AUG 29 1957
JOHN T. FEY, Clerk

No. — 412

In the Supreme Court of the United States

OCTOBER TERM, 1957

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNIONS NOS. 338 AND 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

JEROME D. FENTON,
General Counsel,
STEPHEN LEONARD,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
NORTON J. COME,
Attorney,
National Labor Relations Board,
Washington 25, D. C.

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CITATIONS

Cases:

General Drivers, et al., Local No. 886 v. *National Labor Relations Board*, decided May 9, 1957 (C.A.D.C.)	8
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Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*):	
Section 8(b)(4)(A)	2, 6, 7
Section 8(b)(4)(B)	3, 6, 7

In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNIONS NOS. 338 AND 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit issued June 19, 1957, denying enforcement of the Board order issued against respondent unions.

OPINIONS BELOW

The opinion of the court below (Appendix, *infra*, pp. 9-20) is not yet reported. The findings of fact, conclusions of law, and order of the Board (R. 8-16)[1] are reported at 116 NLRB 1408.

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[1] "R" references are to the portions of the record printed as an appendix to the Board's brief in the court below.

JURISDICTION

The opinion of the court below was handed down on June 19, 1957. The decree of the court below (Appendix, *infra*, pp. 21-22) was entered on July 19, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 and under Section 10(e) of the National Labor Relations Act, as amended, 61 Stat. 147. 29 U.S.C. 160(e).

QUESTION PRESENTED

Whether union inducement of employees not to handle products, which would otherwise be proscribed as a secondary boycott by Section 8(b)(4)(A) and (B) of the National Labor Relations Act, as amended, is lawful because the employer and the union have agreed by contract that the employees may refuse to handle products received from a company with whom the union is directly engaged in a labor dispute.

STATUTE INVOLVED

The pertinent provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*), is as follows:

> Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * *
>
> (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or

requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; * * *.

STATEMENT

A. *The Board's Findings of Fact*

Crowley's Milk Company, Inc. operates plants in New York and New Jersey, where it processes milk, cheese, ice cream mix, and related products which it sells to numerous distributors (R. 20). Since 1948, respondent Locals 338 and 680 have unsuccessfully attempted to become the bargaining representatives of Crowley's employees, who are and were represented by other unions (R. 23-26). In 1955, the two locals decided to take joint action against Crowley's. Accordingly, on April 1, 1955, Local 680 began picketing Crowley's Paterson, New Jersey, plant with signs reading "Crowley's Milk Unfair to Local 680," and Local 338 began picketing Crowley's two New York plants with similar signs (R. 27).

The employees of the dealers handling Crowley's products were members of the respondent locals. The dealers and the two locals were parties to several collective bargaining contracts, containing the following "hot cargo" clause (R. 28, 41, 79):

> It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Employer of the existence of such labor dispute.

On March 17, 1955, Local 338 sent a letter to all employers who were parties to collective agreements with it, notifying them that the two locals were engaged in a labor dispute with Crowley's, reminding them of the hot cargo clause, and announcing: "We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk * * * as long as this labor dispute continues" (R. 41-43). Edward Greco d/b/a Maple Grove Dairy was one of the secondary employers notified, and he replied that he would not cooperate until he could get containers made up under his own trade-name for the by-products normally purchased from Crowley's (R. 43). Negotiations between Greco and Local 338 continued until August 8, 1955, when Greco's employees, upon instruc-

tions from the union, refused to handle Crowley's products (R. 44). On August 9, Greco posted a written notice on the bulletin board in the Company's drivers' room, directing his employees to distribute and sell Crowley's products. Notwithstanding this notice, the employees, on instruction from Local 338, refused to handle the products (R. 44-45).

Early in March 1955, Local 680 sent letters almost identical to the one described above to Crowley's customers having contracts with Local 680 (R. 28-29). Copies of these letters were also sent to the union stewards of these secondary employers, with the following explanatory note (R. 30):

> Dear Sir and Brother:
>
> Enclosed find copy of letters that was sent to your employer. Please see to it that all members under your jurisdiction will abide by the enclosed letter.

Some of the stewards posted copies of the employer letter on the bulletin boards at their plants, and there is evidence that some members of the union were informed of its contents by word of mouth (R. 30, 37, 39). Richard Keber, the secretary-treasurer of Local 680, testified that he expected the stewards to show the employer letter to the employees, and that he expected as a result that members would not handle Crowley's products after April 1, absent a direct order from their employers (R. 30-31). Notwithstanding the union's letter invoking the hot cargo clause, at least four dealers continued to receive shipments of Crowley's products after April 1, 1955. However, because of the union's instructions against handling such products,

the employees indicated their unwillingness to do so, and the dealers ultimately stopped receiving Crowley's products (R. 32-41).

B. *The Board's Conclusions and Order*

Upon the foregoing facts, the Board concluded that Local 680 and Local 338 each violated Section 8(b)(4)(A) of the Act by inducing or encouraging the employees of milk dealers to refuse to handle Crowley's products, for the object of forcing or requiring the dealers to cease doing business with Crowley's (R. 8, 61-63). The Board also found that each union violated Section 8(b)(4)(B) of the Act, in that a further object of such conduct was to force Crowley's to bargain with the union as the representative of a group of Crowley's employees, though it was not the certified bargaining representative of those employees (R. 8, 66). In arriving at these conclusions the Board, following its ruling in the *Sand Door case*, 113 NLRB 1210, held that the unions' inducement or encouragement of the dealers' employees was not removed from the bar of this Section because of the hot cargo clause in the contracts between the dealers and the unions (R. 8, 61).

The Board's order directed each union to cease and desist from the unfair labor practices found, and to post appropriate notices (R. 19-12).

C. *The Decision of the Court Below*

The court below, reaffirming its earlier decision in *Rabouin d/b/a Conway's Express* v. *National Labor Relations Board*, 195 F. 2d 906, 912, held that a hot cargo clause does provide a valid defense for secondary activity otherwise within the proscription of Section

8(b)(4) (A) and (B) of the Act, and denied enforcement of the Board's order (Appendix, pp. 9-20, *infra*). The court stated (*Id.*, pp. 14-15):

> The statutory language is clear: there is no violation of § 8(b)(4) unless the union encourages the employees to *coerce* the secondary employer. Where the employees are encouraged only to exercise a valid contractual right to which the employer has agreed there is no coercion. Normally the secondary employer receives something at the bargaining table in exchange for granting the hot cargo clause, and he is no more coerced when the employees subsequently exercise their privilege than a landowner is coerced when those to whom he has granted licenses cross his land.

REASONS FOR GRANTING THE WRIT

The holding of the court below, that the secondary boycott provisions of the National Labor Relations Act fail to reach union appeals to employees not to handle a product where there is a "hot cargo" agreement between the union and the employer, presents the same question as is involved in the pending petitions for certiorari filed in Nos. 127 and 273.[2] In No. 127, the union seeks review of the decision of the Ninth Circuit in *National Labor Relations Board* v. *Local 1976, United Brotherhood of Carpenters*, 241 F. 2d 147, which is in direct conflict with the decision of the court below, and the Board has not opposed that petition. In

[2] The instant case, unlike Nos. 127 and 273, involves not only a violation of Section 8(b)(4)(A) but also of Section 8(b)(4)(B). However, the requirements of a violation are the same for both subsections, except for a difference as to the object proscribed (see pp. 2-3, *supra*).

No. 273, the Board seeks review of the decision of the District of Columbia Circuit in *General Drivers, et al. Local No. 886* v. *National Labor Relations Board*, decided May 9, 1957, which accords with the decision of the court below. The reasons which we believe make the grant of certiorari appropriate in Nos. 127 and 273 likewise apply to the instant case. For a fuller statement of the Board's position, we respectfully refer the Court to its petition in No. 273 and memorandum in No. 127.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

J. LEE RANKIN,
Solicitor General.

JEROME D. FENTON,
General Counsel,
STEPHEN LEONARD,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
NORTON J. COME,
Attorney,
National Labor Relations Board.

AUGUST, 1957.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OCTOBER TERM, 1956

Nos. 346, 347

(Argued May 14, 15, 1957 Decided June 19, 1957)

Docket Nos. 24368, 24443

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Before CLARK, *Chief Judge*, and SWAN and POPE, *Circuit Judges*.

Petitions to review and set aside, and to enforce, orders of the National Labor Relations Board.

Milk Drivers and Dairy Employees Local Union No. 338 and Milk Drivers and Dairy Employees Local Union No. 680, each of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, petition to review and set aside orders of the

National Labor Relations Board, 116 NLRB No. 195, finding them guilty of unfair labor practices in directing their members to refuse to handle products covered by "hot cargo" clauses in collective bargaining agreements; and the Board asks enforcement of these orders. Reversed and enforcement denied.

CLARK, *Chief Judge*:

Milk Drivers and Dairy Employees Local 338 and Milk Drivers and Dairy Employees Local 680 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, petition this court to review and set aside two orders of the National Labor Relations Board based on findings by the Board that each petitioner was guilty of violating §§ 8(b)(4)(A) and 8(b)(4)(B) of the Labor Management Relations Act of 1947, 29 U.S.C. §§ 158(b)(4)(A) and 158(b)(4)(B). 116 NLRB No. 195. The Board seeks enforcement of these orders. The two cases spring from a common factual background and were consolidated before the Board. The orders are directed against refusals by the locals to handle "hot cargo," *i.e.*, products received by a secondary employer from a primary employer with whom they have a labor dispute.

Crowley's Milk Company, Inc., the primary employer, operates four large plants, where it manufactures and processes milk, cheese, ice cream, and other dairy products which it sells to numerous distributors. Crowley's employees are and were represented by other unions, and since 1948 Locals 338 and 680 have unsuccessfully attempted to become these employees' bargaining representatives. In 1955 the two locals adopted a common plan whereby on April 1, 1955, Local 338 would begin to picket Crowley's two New York plants and simultaneously Local 680 would start to

picket Crowley's New Jersey plant. The locals were in a position to jeopardize Crowley's business relations with ice cream and milk distributors, because the employees of many of these distributors were members of the two locals. The distributors and the two locals were parties to several collective bargaining agreements containing the following hot cargo clause:[1]

"It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this agreement for the members of the union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the union has given written notice to the Employer of the existence of such labor dispute."

Thus in the event of a serious dispute between Crowley's and these locals it was likely that the employees and perhaps the employers of some of Crowley's customers would be loath to handle Crowley's products. The cases are concerned with the unions' relations with these secondary employers; the unions' relations with the primary employer, Crowley's, are not before us.

The facts of the case involving Local 338 are not disputed. On March 17, 1955, the local sent a letter to all employers who were parties to collective agreements

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[1] In Local 680's contract the secondary employers also agreed that they would "not aid other companies in any fight that may be waged against the Union."

with it, notifying them that the two locals were directly engaged in a labor dispute with Crowley's, reminding them of the hot cargo clause, and announcing: "We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Company * * * as long as this labor dispute continues." Edward Greco d/b/a Maple Grove Dairy was one of the secondary employers notified, and he replied that he would not co-operate for six to eight weeks, until he could get containers made up under his trade name for the by-products normally purchased from Crowley's. Negotiations between Greco and Local 338 continued until August 8, 1955, at which time Greco's employees, on instructions from the union, refused to handle Crowley's products. Greco did not acquiesce in his employees' refusal, but on August 9 posted a written notice on the bulletin board in the company drivers' room directing them to distribute and sell Crowley's products. Notwithstanding the notice, the employees on instructions from Local 338 refused to handle the products.

There is disagreement as to the activities of Local 680, but it is clear that it sent notices almost identical to those described above to numerous secondary employers who were customers of Crowley's. These notices were also sent to union stewards of these secondary employers with the following explanatory note:

> "Dear Sir and Brother:
>
> "Enclosed find copy of letter that was sent to your employer. Please see to it that all members under your jurisdiction will abide by the enclosed letter."

It was stipulated that some stewards posted these letters on the bulletin boards, and there is evidence that some members of the union were informed of their con-

tents by word of mouth. Since the Intermediate Report, which the Board-majority adopted, does not resolve the conflicts in testimony as to the union's policy, we adopt for purposes of decision here the union's version that it encouraged the secondary employees to refuse to handle Crowley's goods after April 1 unless and until secondary employers gave direct orders to do so. In fact the union contended that its policy was even milder, eschewing "concerted" refusals under any conditions; but there is substantial evidence to support the finding that concerted action was sought.

The trial examiner did not determine whether or not the secondary employers involved in the Local 680 case gave direct orders to handle hot cargo which the union ordered disobeyed. His reason, adopted by the Board, was that under recent rulings of the Board it is an unfair practice for a union to encourage concerted refusals to handle goods of other employers, regardless of employer acquiescence in the invocation of a hot cargo clause. The Board recognizes that these recent decisions are opposed to our holding in *Rabouin* v. *N.L.R.B.*, 2 Cir., 195 F. 2d 906, and asks us to overrule that case.

This is not the occasion for reversing ourselves in deference to administrative expertise, for the legal question is one of legislative intent and statutory construction as to which the courts are fully competent and, indeed, have the ultimate responsibility. Moreover, the present issue has divided the agency into three fragmentary views which seem to be still in the process of development. Having satisfied ourselves again that our former position appears sound, we reaffirm our earlier decision. In view, however, of the Board's new position and the division among the circuits, perhaps some further analysis is in order.

In the Board's first encounter with this problem a

majority found no unfair practice where the union's concerted refusal was in accord with a hot cargo clause and the secondary employers acquiesced rapidly in the employees' refusal to touch hot cargo. The majority opinion stated three reasons for its result: (1) doubt as to whether the boycott was "secondary"; (2) the employers' rapid acquiescence after the union started the boycott; (3) the employers' advance consent embodied in the hot cargo clause. The Board explained the last ground, saying that where the employer consented in advance by putting such a clause in the collective bargaining agreement there was not " 'a strike or a concerted refusal in the course of their employment to use' etc. 'where an object thereof is: (A) *forcing or requiring*' " because the advance agreement of the employer deprived the later union acts of the requisite quality of insubordination. *Rabouin d/b/a Conway's Express*, 87 NLRB 972, 982, n. 29, with Chairman Herzog concurring in the result and one member dissenting. We affirmed the Board's result, approving this third rationale. *Rabouin* v. *N.L.R.B.*, *supra*, 2 Cir., 195 F. 2d 906, 912: "Consent in advance to honor a hot cargo clause is not the product of the union's 'forcing or requiring any employer * * * to cease doing business with any other person.' § 8(b)(4)(A)."

The statutory language is clear: there is no violation of § 8(b)(4) unless the union encourages the employees to *coerce* the secondary employer. Where the employees are encouraged only to exercise a valid contractual right to which the employer has agreed there is no coercion.[2] Normally the secondary employer re-

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[2] *Accord, General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO* v. *N. L. R. B.*, D. C. Cir., May 9, 1957; *Madden* v. *Local 442, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.*, D. C. W. D. Wis., 114 F. Supp. 932. *Contra: N. L. R. B.* v. *Local*

ceives something at the bargaining table in exchange for granting the hot cargo clause, and he is no more coerced when the employees subsequently exercise their privilege than a landowner is coerced when those to whom he has granted licenses cross his land.

It will not do to say that encouraging work stoppages should be an unfair practice even in the absence of secondary employer coercion because the effect on the primary employer and the public at large is the same although the secondary employer consents. There is some difference to the public between an ordinary boycott of which it had no warning and which may be called for any purpose and a refusal to handle strike-bound goods under the terms of a hot cargo clause. The latter stoppage is less vexatious because it can be anticipated and is limited to the situations prescribed in the clause. But even without such distinctions in effect the Congressional language is clear and we should not expand the prohibitions of the Act merely because the language which eventually emerged from the legislative struggle produces some anomalies. See *Rabouin v. N.L.R.B., supra*, 2 Cir., 195 F. 2d 906, 912.

Both the petitioners and the Board see in the legislative history some factors to support their respective positions. The Board points to the Congressional abhorrence of secondary boycotts,[3] and the petitioners

1976, United Brotherhood of Carpenters and Joiners of America, AFL, 9 Cir., 241 F. 2d 147; *Douds v. Milk Drivers and Dairy Employees Local No. 680*, D. C. N. J., 133 F. Supp. 336, 341-342 (dictum); *Alpert v. United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, D. C. Mass., 143 F. Supp. 371, noted 70 Harv. L. Rev. 735 (1957); Note, *Hot Cargo Clauses as Defenses to Violations of Section 8(b)(4)(A) of the LMRA*, 64 Yale L. J. 1201 (1955); *cf. N. L. R. B. v. Local 11, United Brotherhood of Carpenters & Joiners of America, AFL*, 6 Cir., 242 F. 2d 932.

[3] 93 Cong. Rec. A-1222, 4198-4199, 4838, 4863; Sen. Rep. No. 105, 80th Cong., 1st Sess. 8, 22; Hearings before Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22, 80th Cong., 1st Sess. 381-398, 1715-1729.

find indications that invocation of a hot cargo clause was not what the congressmen meant by "secondary boycott."[4] The Board stresses the interference with the public interest produced by any work stoppage,[5] and the petitioners point out that more recent efforts to get Congress to outlaw hot cargo clauses were defeated.[6] We do not think such tangential legislative history authorizes us to go behind the clear language.

The Board's latest position, as we understand it, is that hot cargo clauses are not contrary to public policy, but that encouraging union men to exercise them is an unfair practice. This view started with the concurring opinion of Chairman Farmer in *McAllister Transfer, Inc.*, 110[8] NLRB 1769, 1788-1790.[7] Chairman Farmer first stressed, as do we, the statute's requirement that the secondary employer be *coerced*. He then distinguished our *Rabouin* decision on the ground that the secondary employers there had immediately acquiesced in the boycott, whereas the secondary employers in the *McAllister* case "posted notices to their employees directing them to handle all freight without discrimination." 110 NLRB 1769, 1790. He thus made determinative the secondary employer's reaction to the union's invocation of the hot cargo clause.

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[4] These are collected in the dissenting opinion of Members Murdock and Peterson in *McAllister Transfer, Inc.*, 110 NLRB 1769, 1790-1799.

[5] 93 Cong. Rec. A-1222, 4198, 4838, 4860, 4863.

[6] S. 2989, 83d Cong., 2d Sess., printed at 100 Cong. Rec. 6125; S. 3842, 84th Cong., 2d Sess., printed at 102 Cong. Rec. 8021.

[7] Prior to *McAllister* the Board decided *Pittsburgh Plate Glass Co.*, 105 NLRB 740, in which it not only reaffirmed its approval of our *Rabouin* decision, but buttressed it by construing the words in § 8(b)(4) "in the course of their employment" as requiring that the work which the secondary employees refuse to perform be work which they previously agreed to perform.

[8] Chairman Farmer's vote was decisive because two other members adhered to the original *Rabouin* decision and the two "majority" members thought hot cargo clauses were against public policy.

Since Chairman Farmer's opinion this doctrine has undergone considerable change. In *Sand Door and Plywood Co.*, 113 NLRB 1210, enforced *N.L.R.B.* v. *Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL*, 9 Cir., 241 F. 2d 147, a two-member majority declared that it was expressing "essentially the view expressed by Chairman Farmer in his concurring opinion in the *McAllister* case" and went on to amplify: "The employer, but not the union, may instruct his employees to cease handling goods sought to be boycotted. Until the employer instructs his employees that they need not handle the 'unfair' product, a strike or concerted refusal to handle such goods [is an unfair practice]."[9] In this version it is an unfair practice to invoke a hot cargo clause while the employer remains silent as to whether he acquiesces or not. Presumably the "majority" in the *Sand Door* case would not have distinguished *Rabouin*, but overruled it.[10] The *Sand Door* majority, whose language the present trial examiner took to be the law, did not discuss the requirement of coercion, but instead quoted selected passages from the legislative history demonstrating that the lawmakers were against secondary boycotts and in favor of the public interest.[11]

The doctrine received a further development in *American Iron and Machine Works Co.*, 115 NLRB 800, enforcement denied *General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO* v. *N. L. R. B.*, D. C. Cir., May 9, 1957. There a two-member majority, expressly relying on the *Sand Door* case, restated the doctrine as follows: "Thus,

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[9] 113 NLRB 1210, 1216, n. 20, 1217.

[10] In addition to the "majority" opinion one member concurred on the ground that the clauses were against public policy and two members dissented, adhering to the Board's earlier view.

[11] 113 NLRB 1210, 1216, n. 21.

while Section 8(b)(4)(A) does not forbid the execution of a hot cargo clause or a union's enforcement thereof by appeals to the employer to honor his contract, the Act does, in our opinion, preclude enforcement of such clause by appeals to employees, and this is so whether or not the employer acquiesces in the union's demand that the employees refuse to handle the 'hot' goods. Accordingly, in affirming the Trial Examiner, we do not find it necessary to rely, as he did, on the fact that the secondary employers herein did not acquiesce in the refusal of their employees to handle American Iron's freight.'"[12] In this most recent statement the reaction of the secondary employer has become wholly irrelevant, and there is still no explanation as to how the majority supplies the missing element of "coercion." Although only this latest position is urged upon us by the Board, we have considered both it and Chairman Farmer's original version and rejected them both. The latest Board view fails to distinguish between instances of employer coercion and instances of employer consent. Chairman Farmer's position, while recognizing the need for such a distinction, ignores the statutory language requiring a "strike" or "concerted refusal in the course of their employment." In the absence of a prior agreement, work to be done by employees is determined unilaterally by the employer; but where a collective agreement specifies the work to be done, that agreement defines the normal work of the employees and a "strike" or "refusal" must be a refusal to do that normal work. The employer obviously cannot impose additional work on the employees contrary to the agreement and then charge that their refusal to perform it constitutes an unfair practice. We see no difference in this respect between tasks exempted by the agreement be-

[12] 115 NLRB 800, 801. As in *Sand Door*, one member concurred and two dissented.

cause they are offensive to health or safety and tasks exempted because their performance is contrary to the interests of organized labor and, in this case, the local itself.

We also do not accept the argument that hot cargo clauses are against public policy. The advocates of this view ignore the statutory language to talk about "secondary boycotts" and the undoubted Congressional dislike of them. Having assumed that refraining from work described in a hot cargo clause is a "secondary boycott," they frame the issue in terms of whether a hot cargo clause is a defense to a § 8(b)(4) unfair practice.[13] We cannot agree with this characterization of the issue. There is no need for a "defense" unless there has been a violation; and in determining the latter question we look to the statutory language, rather than the vague concept "secondary boycott," about which the legislators sometimes talked, but which they did not write into the Act.[14] For the reasons already given we

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[13] *McAllister Transfer, Inc.*, *supra* note 4, 110 NLRB 1769, 1777-1786; *Sand Door and Plywood Co.*, 113 NLRB 1210, 1219-1220, enforced *N.L.R.B. v. Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL*, 9 Cir., 241 F. 2d 147; *American Iron and Machine Works Co.*, 115 NLRB 800, 802-803, enforcement denied *General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO v. N.L.R.B.*, D. C. Cir., May 9, 1957.

[14] See Note, *Hot Cargo Clauses as Defenses to Violations of Section 8(b) (4) (A) of the LMRA*, 64 Yale L. J. 1201, 1206 (1955). This point is recognized by the Senator who has introduced one of the bills cited in note 6 *supra*, designed to outlaw hot cargo clauses. After pointing out that the present statutory phraseology has not proven sufficient to cover all cases of secondary boycott and stating that "the present Board has adopted a more reasonable view of the matter," he goes on to urge that "the problem is so important that it should not be left to the opinions of appointees to administrative office. Congress must speak once and for all in regard to the matter." Explanatory Statement of Senator Curtis, May 14, 1956, introducing S. 3842 to amend § 8(b)(4) to outlaw hot cargo clauses, 102 Cong. Rec. 8022.

hold that there is no "forcing," "requiring," "concerted refusal in the course of their employment," or "strike," and consequently no violation.

Petitions to review granted; orders reversed and enforcement denied.

SWAN, *Circuit Judge* (concurring):

I concur in the result. The Board recognizes that the orders are opposed to our decision in *Rabouin* v. *N. L. R. B.*, 2 Cir., 195 F. 2d 906 and asks us to reconsider it. I am unwilling to reconsider a problem so recently passed upon by this court and have not done so. Consequently I would deny enforcement and reverse the orders on the authority of the *Rabouin* case.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nos. 24368, 24443

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE

Before: CLARK, *Chief Judge*, and SWAN and POPE, *Circuit Judges*.

This cause came on to be heard upon the petitions of Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO and Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO to review and set aside an order of the National Labor Relations Board dated October 25, 1956. The Court heard argument on May 14, 1957, and has considered the briefs and the transcript of record

filed in this cause. On June 19, 1957, the Court, being fully advised in the premises, handed down its decision reversing and denying enforcement of the Board's order and granting the petitions to review and set aside the said order of the Board. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the petitions to review and set aside the Board's order of October 25, 1956, be granted.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that enforcement of the order of the National Labor Relations Board dated October 25, 1956 directed against Petitioners herein, their officers, representatives, agents, assigns, and successors, be and it hereby is denied.

CHARLES E. CLARK,
Judge, United States Court of Appeals for the Second Circuit.

THOMAS W. SWAN,
Judge, United States Court of Appeals for the Second Circuit.

A true copy, (S.) A DANIEL FUSARO,
Clerk.

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IN THE

Supreme Court of the United States

October Term, 1957

No. 412

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNIONS NOS. 338 AND 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO.
Respondents.

BRIEF ON BEHALF OF RESPONDENT, LOCAL 338, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SAMUEL J. COHEN,
Attorney for Respondent, Local 338.

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BRIEF ON BEHALF OF RESPONDENT, LOCAL 338, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

I.

Question Presented

The National Labor Relations Board's petition states that the question presented is as follows:

> "Whether union inducement of employees not to handle products, which would otherwise be proscribed as a secondary boycott by Section 8(b)(4)(A) and (B) of the National Labor Relations Act, as amended, is lawful because the employer and the union have agreed by contract that the employees may refuse to handle products received from a company with whom the union is directly engaged in a labor dispute." (p. 2).

This statement begs the question. It is believed that a more accurate statement of the question presented is:

> "Whether union inducement of employees to decline to perform work which is expressly excluded from the scope of the collective bargaining agreement entered into between the employer and the union may be held to constitute the inducement of a 'refusal in the course of their employment' under Section 8(b)(4) of the National Labor Relations Act, as amended."

II.

Argument

The National Labor Relations Board has previously held that work expressly excluded from the scope of a collective bargaining agreement cannot be the subject matter of a "refusal in the course of their employment" under Section 8(b)(4) of the Act.

At page 42 of the Board's brief filed in support of its petition for enforcement in the case of *Rabouin* v. *National Labor Relations Board*, 195 F. 2d 906, before the United States Court of Appeals for the Second Circuit, the Board stated:

> "In these circumstances, the refusal of the employees to handle Rabouin's freight was not a strike or a concerted refusal to work induced by the Union in violation of Section 8(b)(4)(A). A strike is the concerted withhholding of labor to gain the employer's accession to a demand which he is resisting. It is the employees' cessation of 'work at their own volition because of the failure of the employer to meet their demands.' In this case, however, the employees' refusal to handle Rabouin's goods was not in opposition to their employer. It was in keeping with the advance agreement of each employer, not repudiated but acquiesced in throughout. Thus, the indispensable prerequisite of a strike—a demand which the employer resists and for which the strike,

> is called—is missing. A refusal to work in which the employer concurs can hardly be called a strike against him."

The United States Court of Appeals in the *Rabouin* case sustained the Board's position and held:

> "The Union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provision relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's 'forcing or requiring any employer * * * to cease doing business with any other person.' Section 8(b)(4)(A)." (195 F. 2d 906, 912)

Subsequent to the *Rabouin* case the Board had before it a situation similar to situation in the case at bar. *Pittsburgh Plate Glass Co.* (105 N. L. R. B. No. 120; June, 1953). In the *Pittsburgh* case the Board recognized that since the contract did not require employees to handle non-union goods, such work could not be correctly held to be "in the course of their employment". The Board stated:

> "Nor was their employees' refusal to handle Pittsburgh freight 'in the course * * * employment within the meaning of Section 8(b)(4)(A) for that employment as defined by the contracts excluded from the required job duties work on 'unfair goods'" (105 N. L. R. B. at p. 744).

It was clear in the *Pittsburgh Plate Glass* case that the employees had been induced to refuse to handle the goods by the Union. The Board found:

> "In view of the foregoing and on the record as a whole, we find that during the period involved herein, the Respondent engaged in, and by its instructions and other appeals, induced and encouraged the employees of various trucking carriers to engage in, a concerted refusal to handle Pittsburgh freight." (105 N. L. R. B. at p. 743).

The Board plainly concluded as follows:

> "While we find on the basis of the facts set forth below that the Respondent engaged in and induced employees of various trucking carriers to engage in a concerted refusal to handle Pittsburgh freight, we agree with the Trial Examiner that such action was a permissible exercise of contractual rights under the *Conway's Express* principle and hence no violation of the Act" (105 N. L. R. B. at p. 740).
>
> • • •
>
> "The Court of Appeals for the Second Circuit held in affirming the Board's decision in Conway's Express:
>
> > 'Consent in advance to honor a hot cargo clause is not the product of the union's "forcing or requiring any employer • • • to cease doing business with any other person."'
>
> The Board here reaffirms that principle. We therefore find that the Respondent did not violate Section 8(b)(4)(A) of the Act by causing the employees of the various trucking carriers to exercise their contractual privilege of declining to handle Pittsburgh freight. Accordingly, we shall dismiss the complaint" (105 N. L. R. B. at pp. 744, 745).

Thereafter in a series of cases, *McAllister Transfer, Inc.*, 110 N. L. R. B. No. 224 (December 16, 1954), *Sand Door and Plywood Co.*, 113 N. L. R. B. No. 123 (August 26, 1955), and *American Iron and Machine Works Co.*, 115 N. L. R. B. No. 121 (March 15, 1956), the Board, following a somewhat erratic course, proceeded to repudiate its former decisions and to defy the validity of the judicial determination of the United States Court of Appeals for the Second Circuit in the *Rabouin* case.

In the *McAllister* case two members of the Board took the position that so-called hot cargo provisions "are contrary to public policy and therefore no defense to the violation found herein". Differing, the then Chairman of the Board held that it was for Congress and not the Board to

legislate in such a manner as to outlaw collective bargaining agreements, and he concurred in the result solely upon the unique ground that the conduct in question became "a refusal" by the employees, under the Act, when the employer breached his contract and ordered his employees to perform the work.

Two members of the Board dissented, stating that they did not "consider it a proper function of the Board to disregard the sanctity of a valid contract" and that they could not countenance a conclusion that an employer by his own breach of contract should be permitted to cause a Union to be guilty of violating the Act.

Apparently troubled by the insecure reasoning of its stated position, the Board has since, in the *Sand Door* and *American Iron* cases, altered its rationale.

The Board now asserts that, no matter whether the employer observes or breaches his contract, it is unlawful for a Union to advise its members that they need not perform categories of service which are expressly excluded from the collective bargaining agreement. The Board states in its brief to the United States Court of Appeals for the Second Circuit in the case at bar (p. 37):

> "But, as the Ninth Circuit observed in enforcing the Board's *Sand Door* decision, *supra*, p. 27 (39 LRRM at 2433): 'An employer may well regain free to decide, as a matter of business policy, whether he will accede to a union's boycott demands, or, if he has already agreed to do so, whether he will fulfill his agreement. An entirely different situation, however, is presented * * * when it is sought to influence the employer's decision by a work stoppage of his employees.' Thus, although an employer may have agreed to a 'hot goods' clause, it does not follow that he will share the union's view as to whether a particular case is encompassed thereby."

To put the matter in plainer terms, the employer is told by the National Labor Relations Board, which the Act has instructed to promote and stabilize collective bargaining

(Sections 1, 7, and 301 of the Act), that he may breach his contract and thereby cause the Union to be guilty of violating the Act, or, if he prefers "as a matter of business policy" he may boycott the primary employer. At the same time the Union is told that it may not advise its members to enforce their collective bargaining agreement.

It is respectfully submitted that the Board's position is manifestly immoral, as well as lacking in legal foundation, and that the Court should deal with this matter summarily by a *per curiam* decision which would affirm the decision of the Court below. We join in a similar prayer made to this Court by the Respondent in case No. 273.

Conclusion

The opinion of the United States Court of Appeals for the Second Circuit concludes as follows:

> "The latest Board view fails to distinguish between instances of employer coercion and instances of employer consent. Chairman Farmer's position, while recognizing the need for such a distinction, ignores the statutory language requiring a 'strike' or 'concerted refusal in the course of their employment.' In the absence of a prior agreement, work to be done by employees is determined unilaterally by the employer; but where a collective agreement specifies the work to be done, that agreement defines the normal work of the employees and a 'strike' or 'refusal' must be a refusal to do that normal work. The employer obviously cannot impose additional work on the employees contrary to the agreement and then charge that their refusal to perform it constitutes an unfair practice. We see no difference in this respect between tasks exempted by the agreement because they are offensive to health or safety and tasks exempted because their performance is contrary to the interests of organized labor and, in this case, the local itself.

> "We also do not accept the argument that hot cargo clauses are against public policy. The advocates of this view ignore the statutory language to talk about 'secondary boycotts' and the undoubted Congressional dislike of them. Having assumed that refraining from work described in a hot cargo clause is a 'secondary boycott,' they frame the issue in terms of whether a hot cargo clause is a defense to a § 8(b)(4) unfair practice. We cannot agree with this characterization of the issue. There is no need for a 'defense' unless there has been a violation; and in determining the latter question we look to the statutory language, rather than the vague contempt 'secondary boycott,' about which the legislators sometimes talked, but which they did not write into the Act. For the reasons already given we hold that there is no 'forcing,' 'requiring,' 'concerted refusal in the course of their employment,' or 'strike,' and consequently no violation."

It is respectfully submitted that the decision of the United States Circuit Court of Appeals is soundly reasoned and should be affirmed.

Respectfully submitted,

SAMUEL J. COHEN,
Attorney for Respondent, Local 338.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 412

NATIONAL LABOR RELATIONS BOARD,
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MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNIONS NOS. 338 and 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT, MILK DRIVERS AND DAIRY EMPLOYEES, LOCAL UNION 680, IN OPPOSITION.

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BRIEF FOR RESPONDENT, MILK DRIVERS AND DAIRY EMPLOYEES, LOCAL UNION 680, IN OPPOSITION.

I.

Questions Presented.

At the ultimate hearing of an appeal in this matter, should there be one, Local 680 will urge that the following questions are presented in this matter for determination:

1. Is it an unfair labor practice, under Section 8(b)(4) of the Labor Management Relations Act of 1947, for the union to request employees who are under contract with it

to refrain from purchasing goods produced by an employer with whom it is engaged in a labor dispute?

2. Is it an unfair labor practice for the union to inform its members that it has made such a request of their employers, provided it does not request or instruct its members to refuse their employers' instruction to handle the product?

3. Is a refusal to handle products by one employee of an employer a "concerted" refusal, as defined by Section 8(b)(4)? Is such a refusal by one employee of each of two or more employees a "concerted" refusal?

4. Does an unauthorized refusal to handle products, on the part of one employee, which refusal is terminated by instructions of the union as soon as the union learns about it, constitute a violation of Section 8(b)(4) of the Act?

5. Is a threat by a union to an employer under contract with it that its members will refuse to handle "hot cargo" a violation of Section 8(b)(4) if the threat is never communicated to the employee-members of the union?

6. In the light of the evidence in this case, is the respondent Local 680 guilty of a violation of Section 8(b)(4) of the Act?

The foregoing questions are all at issue in this case. However, from the point of view of the petition for certiorari, and in the light of the opinion of the Court below, it would seem that the questions presented upon this application can be simply stated as follows:

Whether, under the provisions of a collective bargaining contract which grant to employees the right to refuse to

handle products of a company with which the union is in dispute, it is a violation of Section 8(b)(4) of the Act for the union to notify its member-employees of the employer that the union has requested their employer not to purchase the products of a company which is in dispute with the union, and to request them not to handle the products of that company.

ARGUMENT.

We shall, should this matter come to a hearing upon certiorari, argue, *inter alia*, that there was no "union inducement of employees not to handle products" as alleged by petitioner on page 2 of its brief under "QUESTION PRESENTED." However, because this presents a factual question which would require a review of the record, we adopt the statement of the "QUESTION PRESENTED" as last set forth, solely for the purpose of this argument in opposition to the petition now before the court.

We maintain that even if the union did induce its members not to handle said products, this inducement, under the circumstances of this case, is not a violation of section 8(b)(4) of the National Labor Relations Act, as amended, and that this proposition is so crystal clear that we respectfully request the court to deny the petition for a writ of certiorari, unless upon a reading of the record the Court desires to enter a *pro forma* affirmance of the Court below.

Counsel has read the Brief for Respondent in Opposition on Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit in Case No. 273 of the October Term, 1957, of this Court and

is in accord with and adopts the reasoning set forth therein. We shall not burden the Court with a repetition of the arguments contained therein. We join in the similar request that this matter be disposed of by a *per curiam* decision affirming the decision of the Second Circuit Court in the instant case and affirming the decision of the District of Columbia Circuit Court in the *Local 886* case.

In the case *sub judice*, the Second Circuit has held that a hot cargo clause in a collective bargaining agreement is not a violation of Section 8(b)(4) of the Act and that under this type of clause the union may induce its members not to handle the hot cargo. The Court reasons that: (1) a hot cargo clause obtained by negotiations between company and union is not coercion within the meaning of the Act, and (2) the exclusion of certain types of work in the collective agreement removes said excluded work from the "course of employment."

The Court of Appeals for the District of Columbia Circuit has made a similar ruling involving petition No. 273 involving Local 886.

In *National Labor Relations Board v. Local 1796, United Brotherhood of Carpenters*, 241 F. 2d 147, there was a collective bargaining agreement which contained the following provision: "Workmen shall not be required to handle non-union material." The crucial question was whether such a provision justified a union-induced work stoppage of the employees when the employer desired its employees to perform work on "non-union material." The Ninth Circuit Court of Appeals ruled that the union was guilty of an unfair labor practice within the meaning of 8(b)(4)(A) of the Act.

In discussing the *Local 1796* case, the Ninth Circuit Court of Appeals says:

> "An employer may well remain free to decide, as a matter of business policy, whether he may accede to a union's boycott demands, or, if he has already agreed to do so, whether he will fulfill his agreement."

Thus, the Ninth Circuit holds that the employer may lawfully refuse to handle hot cargo but after signing the agreement the employer may refuse to honor the "hot cargo" clause. In other words, the Ninth Circuit has indicated that an employer may refuse to handle hot cargo without violating public policy. Yet, the union, which is a signatory party to the agreement, is allegedly guilty of an unfair labor practice if it induces the company employees to refuse to perform *work which the company may legally refuse to have performed and which work said company has agreed shall not be performed* by the employees concerned. Such a proposition is untenable on its face.

Aside from this, a reading of section 8(b)(4) of the Act establishes that this section of the Act has no application because the collective bargaining agreement has removed "hot cargo" from "the course of employment."

However, even aside from the interpretation of this phrase in the statute, and even if it were absent from the statute, the handling of "hot cargo" is, by contract, excluded from, and is not part of the employment here considered.

This Court in *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332, 64 Sup. Ct. 576 (1944), had occasion to examine the consequences and legal effect of a collective

bargaining agreement and held that the individual contract of hiring must yield to the collective agreement because collective bargaining "results in an accord as to terms which *will govern hiring and work and pay in that unit.*"

Thus, if the collective agreement excludes certain categories of work, those categories are no longer within the course of employment and there can be no violation of Section 8(b)(4) of the Act, which involves a refusal, concerted or otherwise, to perform work *which is not a part of the employment.*

We wish respectfully to emphasize that this argument prevails, and is an effective bar to prosecution under Section 8(b)(4), whether or not we define "course of employment" as did Chairman Farmer of the N. L. R. B. in *Pittsburgh Plate Glass*, 105 N. L. R. B. 740 (1953), or as Chairman Farmer defined the same phrase when he reversed himself in the *Sand Door & Plywood Co.* case, 113 N. L. R. B. 1210 (1955).

We submit that *irrespective of the wording of the Act, and of the interpretation of the phrase "course of employment" as contained in the Act*, where, *by a contract of collective agreement*, an employer and employee or a group of employees, expressly exclude a certain type of work from the duties of the employee, that work is outside the area of the duties of the employees. *The employee has no right to perform that work and therefore has the right to refuse to perform the duties.*

Since the N. L. R. B. accepts the validity of a "hot cargo" clause, a denial of the validity of a refusal to do "hot cargo" is, we submit, a contradiction in terms, and is utterly without support in law or logic.

We have stressed this point because it does not seem to have been referred to with sufficient emphasis by the brief for the respondent in opposition to the application for certiorari in the *American Iron & Machine Works* case, (*N. L. R. B.* v. *General Drivers Local No. 886*, Case No. 273, October term, 1957).

In other respects the brief of the respondent in that case (*American Iron Works*, *supra*) so fully expresses our point of view that we do not wish to burden the Court by a repetition of what was there said.

We therefore respectfully refer to and rely upon the arguments of counsel for the respondent in *American Iron Works*, *supra*, and also of counsel for Local 338 in the present proceedings as a further basis for our contentions that the application presently made for certiorari should be denied.

Conclusion.

For the reasons heretofore set forth and for the reasons stated by counsel for respondent Local 338, as well as counsel for respondent in *American Iron Works*, *supra*, the union did not violate Sections 8(b)(4) of the Act and it is respectfully requested that either this application for certiorari be dismissed or, preferably, that the decision of the Court below be affirmed without the delay occasioned by further hearing.

Respectfully submitted,

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By THOMAS L. PARSONNET.